

UNITED STATES OF AMERICA

DEPARTMENT OF THE INTERIOR

No. 371

WILLIAM WALL AND OTHERS, PETITIONERS
FOR A PATENT FOR DISCOVERY OF A NEW
MINERAL

THE WALL MINING COMPANY AND
THE WALL MINING COMPANY

THE WALL MINING COMPANY AND
THE WALL MINING COMPANY

THE WALL MINING COMPANY

(S. 371)

(24,968)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 271.

WILLIAM E. WALL AND ETTA FOSS, EXECUTRIX OF THE
WILL OF LOUIS FOSS, DECEASED, APPELLANTS,

vs.

PARROT SILVER AND COPPER COMPANY AND ANACONDA
COPPER MINING COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF MONTANA.

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L. O. Evans, Esq., W. B. Rodgers, Esq., D. Gay Stivers, Esq., C. F. Kelley, Esq., all of Butte, Montana, Solicitors for Defendants and Appellees.

1 In the Circuit Court of the United States, Ninth Circuit, District of Montana.

No. 464. In Equity.

WILLIAM E. WALL and LOUIS FOSS, Complainants,
vs.

ANACONDA COPPER MINING COMPANY, a Corporation of Montana,
and Parrot Silver & Copper Company, a Corporation of Montana,
Defendants.

Be it remembered that on January 9th, 1911, the Complainants filed their Bill of Complaint herein in the words and figures following, to wit:

2 UNITED STATES OF AMERICA:

In the Circuit Court of the United States within and for the District of Montana, Sitting in Equity.

Bill of Complaint.

To the Honorable the Judges of the Circuit Court of the United States, within and for the District of Montana, sitting in Equity, William E. Wall and Louis Foss, both of Boston, and citizens of the State of Massachusetts, brings this their bill against Parrot Silver and Copper Company, a corporation of Montana, and the Anaconda Copper Mining Company, a corporation of said Montana, and located at Butte, and a citizen of the State of Montana:

And thereupon the plaintiffs complain and say that:

1. Said plaintiffs are stockholders in the Parrot Silver and Copper Company, the defendant corporation, and the owners of twelve hundred and ten (1210) shares of stock of said corporation, and said Wall has been such shareholder since April, 1900, and said Foss since April, 1908, and were such shareholders at the time of the transaction of sale of the assets of the said defendant corporation, Parrot Silver and Copper Company, to the defendant corporation, Anaconda Mining Company, and that this suit is not

a collusive one to confer on a Court of the United States jurisdiction of a case of which it would not otherwise have cognizance.

2. On or about the fourth day of April, 1899, certain persons, to wit, Sidney Chase, F. P. Addicks, A. W. Bemis, Charles D. Burrage, R. D. Willard, John E. Judson, C. H. Dickey, John D. Ryan, B. B. Thayer, A. B. Grafius, H. A. Gallway, A. H. Melin, F. Lothrop Ames, Albert C. Burrage, William Rockefeller, H. H. Rogers, Urban H. Broughton, H. I. Meehan, and others to the plaintiffs unknown, as the plaintiffs are informed and believe and therefore charge, procured the control by the purchase of the majority of stock directly or indirectly of the defendant corporation, Parrot Silver and Copper Company, and thereafter owned and controlled the majority of said stock, whereby the management and control of said corporation was under their direction.

3. Upon securing said control and management the said persons, so named as aforesaid with other persons to the plaintiffs unknown, as plaintiffs are informed and believe and therefore charge, combining and confederating together, entered into a conspiracy whereby they made a false and fraudulent scheme to fraudulently lessen, diminish and deplete the assets of the said defendant corporation, Parrot Silver and Copper Company, and to acquire the assets of the said company after said fraudulent diminution and depletion at a value far less than the real value thereof, and, by such fraudulent scheme, to deprive the minority stockholders of whom is the plaintiff of the just and fair value of their right and interest as shareholders in said defendant corporation, Parrot Silver and Copper Company, or any just or fair appraisal of the value of the stock of said minority stockholders, and your plaintiff, on any just and adequate basis of value as such shareholders in the assets of said defendant corporation, Parrot Silver and Copper Company, at the time of the transfer of the remaining assets, after said diminution and depletion in pursuance of said fraudulent scheme, to the defendant corporation, Anaconda Copper Mining Company.

4. In furtherance of said conspiracy and fraudulent scheme said persons absolutely control the affairs of and dictated the policy of the defendant corporation Parrot Silver and Copper Company and so directed the same to defraud the minority stockholders of whom is the plaintiff, and keep said stockholders and the plaintiff in ignorance of the financial condition and diminution and depletion of assets until a final transfer of all the assets of said defendant corporation, Parrot Silver and Copper Company, was made in pursuance of said fraudulent scheme.

5. Said defendant corporation, Parrot Silver and Copper Company, was incorporated under the laws of the Territory of Montana in the year 1880, and its charter was renewed in 1897 for twenty years under the laws of the State of Montana, and in 1898, its capital stock was \$2,300,000, and its debt \$25,000, which was its condition in April 1899, at or about which time the defendants assumed its control and management in pursuance of said fraudulent scheme. The par value of the shares was ten (10) dollars, and the number of shares 230,000, and its surplus at that time was \$1,898,964, and its assets consisted of mines, mining prop-

erties, water privileges, surface lands, ditches, canals, smelter, reduction works, refiner, shafts, dumps, tailings, tools and works, used in and belonging to the same, situated in said State of Montana, except the refiner with the wharf and buildings and premises, which was at Bridgeport, in the State of Connecticut. Its mines were situated in about the middle of the mining district of Butte in said Montana and the adjacent mines were and are of large value and were and are under the control of said persons so confederating and scheming as stated, from which the ore, principally copper, has been continuously mined and the output increased as they reach a lower depth, which the plaintiff is informed and believes and therefore charges is about two hundred feet below the level of the workings of the mines of the said defendant corporation, Parrot Silver and Copper Company, at the time of the final transfer of its assets in pursuance of said fraudulent scheme.

6. In pursuance of said fraudulent scheme and conspiracy aforesaid said persons caused the stock of the Bridgeport Copper Company, all of which it held directly or indirectly or as part of the assets of the said defendant corporation, Parrot Silver and

5 Copper Company, to be voted on and the company wound up and the refining plant of said company at Bridgeport Connecticut, to be closed and dismantled so that no more refining could be done at said works, and the contract between said defendant corporation Parrot Silver and Copper Company and the said Bridgeport Copper Company then existing and extremely profitable, to be ended, and the premises sold in 1910, for \$45,000, thereby diminishing the assets of the defendant corporation Parrot Silver and Copper Company in the sum of \$300,000, the said property being of the value of \$345,000, as the plaintiff is informed and believes, and therefore charges besides a loss of the profit constantly accruing to the defendant corporation, Parrot Silver and Copper Company, by the refining process of its ores at said works at Bridgeport, and the treatment of said ores being transferred to, and a contract made with, the United Metals Selling Company, a corporation owned and controlled by said persons confederating and conspiring as aforesaid, at or near Raritan, New Jersey, and the returns of which refiner works were completely under direction and control of said persons, and so managed and controlled by them in pursuance of said fraudulent scheme that from a profit before existing as the plaintiff is informed and believes, and therefore charges, a loss resulted to the defendant corporation, Parrot Silver and Copper Company. The real and actual profits, if any, being concealed from and never known by the minority stockholders, or the plaintiff, and not being shown upon the books of said defendant corporation, Parrot Silver and Copper Company.

7. In pursuance of said fraudulent scheme the said persons so confederating and conspiring as aforesaid caused part of the machinery of the smelting plant of the defendant corporation, Parrot Silver and Copper Company, to be removed from Butte and placed in the reduction works of the defendant corporation, Anaconda Copper Mining Company, at Anaconda in said State of Montana, which was then under the control of said persons,

6

and the contract for smelting the ores of said defendant corporation, Parrot Silver and Copper Company, to be made at a loss with the said defendant corporation, Anaconda Copper Mining Company; all the smelting returns being under the control of said persons and no true and accurate returns ever being made thereof by the directors of the said corporation, Parrot Silver and Copper Company, who were among the persons named as aforesaid, but the true returns being concealed and kept by said persons for their own advantage in pursuance of the fraudulent scheme as aforesaid, whereby the assets of said defendant corporation, Parrot Silver and Copper Company, were diminished by the value of the said smelter, which as your plaintiff is informed and believes, and therefore charges, was of the value of \$700,000 besides the constantly accruing profit to the defendant corporation Parrot Silver and Copper Company from the use of the smelter, so demolished as aforesaid, for its ore, which thereafter became a loss instead of a profit, to the extent as the plaintiff is informed and believes, and therefore charges, of \$5,000,000.

8. In pursuance of said fraudulent scheme, said persons so confederating and conspiring as aforesaid procured machinery to the value of \$750,000 to be obtained and paid for by the defendant corporation, Parrot Silver and Copper Company about the year 1901, to be used in smelting works then owned by said company at Gaylord, Montana, and caused said machinery so procured and paid for, to be delivered to the said defendant corporation, Anaconda Copper Mining Company, then and there under its control and direction, and, as the plaintiff is informed and believes, and therefore charges, no payment by said Anaconda Copper Mining Company, nor account thereof was ever rendered to the stock-

7 holders of said defendant corporation, Parrot Silver and Copper Company, whereby the assets of said defendant corporation, Parrot Silver and Copper Company, were diminished in the sum of \$750,000 besides the value of the use of said machinery.

9. In pursuance of said fraudulent scheme, said persons confederating and conspiring, as aforesaid, caused the smelter of the defendant corporation Parrot Silver and Copper Company at Gaylord in the State of Montana of the value, as your plaintiff is informed and believes and therefore charges of \$1,000,000 to be dismantled and destroyed so that no smelting could be done upon the premises, which had previously been done at a profit to the defendant corporation, Parrot Silver and Copper Company, whereby the assets of said defendant corporation, Parrot Silver and Copper Company, were diminished in the sum of \$1,000,000 and no account was ever rendered therefor to the minority stockholders of the plaintiff.

10. In pursuance of said fraudulent scheme, said persons confederating and conspiring as aforesaid, about the year 1900, and since said time have caused large quantities of ore of great value to be taken from the mines of said defendant corporation, Parrot Silver and Copper Company, through the shafts and workings of said defendant corporation, Anaconda Copper Mining Company, of which they had control and have shipped the same to the smelter and

reduction works of said Anaconda Mining Company, at great expense of freight, hauling and handling, then and there to be reduced, smelted and treated at an expense greatly in excess of the cost of smelting said ores, if the works at Butte had been maintained, and in excess of proper and reasonable charges, and said ore so taken was never sampled or weighed in a true and accurate manner and no true or accurate account was kept thereof, and the assets of said defendant corporation, Parrot Silver and Copper Company, were diminished by the amount of ore so taken and the excessive charges and other expenses so made, as stated, and no payment has ever been made therefor and no account rendered to the stockholders in minority of said defendant corporation, Parrot Silver and Copper Company, or the plaintiff; and the plaintiff is informed and believes, and therefore charges, that the value of said diminution and depletion of assets of said defendant corporation Parrot Silver and Copper Company thereby is in excess of \$5,000,000.

11. In pursuance of said fraudulent scheme said persons conspiring and confederating together, on or about September —, 1906, when the defendant corporation, Parrot Silver and Copper Company, had in its assets certain bodies of ore of great value and in which its rights were extensive and which was called the Blue Vein Lode and, as the plaintiff is informed and believes and therefore charges capable of producing 1,000 tons of very high grade copper ore daily and the title and rights to which had been decided, in favor of said defendant corporation Parrot Silver and Copper Company by the Courts of last resort, then and there sold to the Red Metal Company, a corporation of which said persons had control, without any valuable consideration and without account to the minority stockholders or knowledge thereof or notice thereto, or of the plaintiff and the assets of said defendant corporation Parrot Silver and Copper Company were diminished thereby as the plaintiff is informed and believes, and therefore charges to the value of \$50,000,000.

12. In pursuance of said fraudulent scheme, said persons so confederating and conspiring as aforesaid, on or about July 10, 1906, sold realty of the defendant corporation Parrot Silver and Copper Company situated at Helena, Montana, being about one half section or more, a more particular description is to the plaintiff unknown, but the deed or a copy thereof he prays leave to produce at the hearing hereon, to one J. W. Pace in trust for said persons, and no account thereof, nor consideration therefor, has ever been made to the minority stockholders or the plaintiff and the assets of the said defendant corporation, Parrot Silver and Copper Company, were diminished thereby as the plaintiff is informed and believes and therefore charges to the value of \$200,000 or more.

13. In pursuance of said fraudulent scheme said persons so confederating and conspiring as aforesaid, about March 1908, caused to be sold to Ike E. O. Pace of Montana, without any valuable consideration, realty of the defendant corporation Parrot Silver and Copper Company described in the Deed Book 41, of Deeds on page 1, Records of Jefferson County, Montana, whereof the plaintiff prays

leave to produce a copy at the hearing hereon, and no account, notice or payment therefor has ever been made to said defendant corporation, Parrot Silver and Copper Company, or the stockholders thereof, of to the plaintiff, and said realty was forthwith, after said sale to Pace, conveyed to the Madison River & Power Company, a New Jersey corporation, owned, controlled and managed by said persons, and the assets of said defendant Parrot Silver and Copper Company were depleted and diminished thereby as the plaintiff believes and therefore charges to the value of \$200,000 or more.

14. In pursuance of said fraudulent scheme, said persons conspiring and confederating together, about September, 1908, caused to be conveyed to Henry F. Kroyer, of New York without any valuable consideration, certain valuable parcels of land in the County of Madison, Montana, also Parrot Quarry, and the Protection Quartz Lode in Jefferson County, Montana, and other realty in said County, *was* the rights to Waters, ditches, flumes and canals in said Jefferson County the houses, buildings, machinery and other personal property located upon said realty and used in connection therewith

and with the waterways so conveyed, eight and one-half
10 shares of the capital stock of Fish Creek Land and Ditch Company, all being the assets of the defendant corporation, Parrot Silver and Copper Company, and more particularly described in the deed recorded in Book 41 Page 96, records of Jefferson County, Montana, which the plaintiff prays leave to produce at the hearing hereon, and no payment therefor, account thereof or notice thereof, was ever made to the stockholders of the defendant corporation, Parrot Silver and Copper Company, and all of said property forthwith was caused to be conveyed to the Madison River Power Company, a New Jersey corporation, owned, controlled and managed by said persons, and the assets of said defendant corporation, Parrot Silver and Copper Company were depleted and diminished thereby to the value as the plaintiff is informed and believes, and therefore charges, \$5,600,000.

15. In pursuance of said fraudulent scheme, said persons confederating and conspiring together as aforesaid, caused to be conveyed from the assets of the defendant corporation, Parrot Silver and Copper Company, about the year 1900, and from that time to the present date, directly or indirectly to the defendant corporation Anaconda Copper Mining Company valuable lodes, claims and mining properties of large extent and having large bodies of ore without any valuable consideration, notice to stockholders, payment or account therefor, and no account whereof has ever been rendered to said defendant corporation, Parrot Silver and Copper Company, or the stockholders thereof or to the plaintiff, and many of which said conveyances and transfers have been withheld and concealed by said persons, and are unknown by description to the plaintiff, but among which is a lot known as the south west quarter of the southeast quarter of section eighteen of Township 3, Range 7, West,
and a lot known as the northeast quarter of the southeast
11 quarter, and a lot known as the southeast quarter of the southwest quarter, and a lot known as the northwest quarter of the

southeast quarter of section 24, Township 3, North Range 7, west, in Silver Bow County, Montana and the Kentucky Lode, lot 156 in said Butte, and the Lodes known as Hall, Millside, Great Western, Narrow Gauge, the said persons, having the control and management of the said defendant corporation Anaconda Copper Mining Company at the time of said transfers, and of the other adjacent mines, and well knowing that the value of the ore in said properties and claims so transferred was large and especially to them as adjacent owners or controllers of adjacent mines, and by reason of said transfers the assets of said defendant corporation, Parrot Silver and Copper Company were greatly depleted and diminished in fraud of the rights of the minority stockholders and the plaintiff to the value as the plaintiff is informed and believes, and therefore charges \$2,000,000 and upwards.

16. In pursuance of said fraudulent scheme, said persons so confederating and conspiring as aforesaid, and well knowing that large bodies of ore in the mining claims of the defendant corporation, Parrot Silver and Copper Company, could be extracted and sold at a profit, and that various shafts to wit, Little Minah, Bellona, Parrot, would aid in mining the same, and were a practical necessity therefore, closed said shafts and others in the mines of the defendant corporation, Parrot Silver and Copper Company, at a gross and wilful expense, and so wrongfully, carelessly and negligently managed and directed the workings and minings of said defendant corporation Parrot Silver and Copper Company in pursuance of their fraudulent scheme, that they wilfully, intentionally and fraudulently, caused the mining aforesaid to be done at a loss, and the development

thereof to be made solely for the benefit of the defendant corporation, Anaconda Copper Mining Company, and other properties of which they had control, and said defendant corporation, Parrot Silver and Copper Company, was wilfully and intentionally changed from a dividend bearing and profit paying corporation to a depreciated and losing corporation, and its assets greatly diminished thereby, the value of which, as the plaintiff is informed and believes, and therefore charges, of \$5,000,000 or more.

17. In pursuance of said fraudulent scheme, said persons confederating and conspiring together and being in charge and control of said defendant corporation, Parrot Silver and Copper Company, allowed no accounts to be made or kept of the said defendant, whereby the amount of ore mined, smelted and refined or the value thereof could be ascertained by any examination thereof, and the plaintiff is informed and believes and therefore charges that said persons kept an account for their own inspection and that said accounts are concealed wilfully by said persons from the minority stockholders of said corporation and the plaintiff.

18. By the Montana code, 1907, section 4408 *et seq.* which the plaintiff prays leave to produce at the hearing hereon, a law passed in 1899 provide that mining corporations in said State of Montana may convey the assets in exchange for stock of another mining corporation by a two thirds vote of the stockholders, and that a dissenting stockholder may have the value of his stock appraised

in the State Court by appraisers appointed by said Court; and the said persons in pursuance of said fraudulent scheme confederating and conspiring, as aforesaid, and being in the control of said defendant corporation, Parrot Silver and Copper Company, and having a majority of its stock on April 30, 1910, caused a stockholders' meeting to be held and against the objection of the plaintiff then and there duly made, caused a vote to be made to convey the assets and property of the defendant corporation, Parrot Silver and Copper Company, to the defendant corporation, Anaconda Copper Mining Company, then and there under their control as aforesaid, in exchange for the stock of said defendant corporation Anaconda Copper Mining Company, at a rate of exchange established by said persons in pursuance of said fraudulent scheme and accepted by said defendant corporation, Parrot Silver and Copper Company, by their direction and in wilful disregard of the rights of the minority stockholders of said defendant corporation, Parrot Silver and Copper Company, and that of the plaintiff.

19. In pursuance of said fraudulent scheme, said persons confederating and conspiring as aforesaid, caused a conveyance to be made of all the assets and property of the defendant corporation, Parrot Silver and Copper Company, to the defendant corporation, Anaconda Copper Company, including property not specially described in said conveyance and property held in trust and in the names of other parties withheld and concealed from the other stockholders and the plaintiff, and whereby all the properties hereinbefore referred to and taken from the assets of the defendant corporation, Parrot Silver and Copper Company were placed in their control and to their profit in concealed terms, which conveyance or copy thereof the plaintiff prays leave to produce at hearing hereon.

20. And whereas the plaintiff was informed that, as dissenting stockholder, he should apply to the State Court of Montana for appraisal of stock under the Statute before referred to, and filed a petition therefor protesting that he ought not to be called upon to file said petition because he believed, and still believes that the provisions of said statute to be unconstitutional and void and contrary to the provisions of Section 10, of article 1, of the Constitution of the United States, and the provisions of Article 5 in Amendment of the Constitution of the United States, in that said exchange impairs the obligation of the contract of the plaintiffs as shareholder in said corporation, so sold, and takes away his right and property therein as such shareholder, without due process of law.

21. Even if the constitutionality of said Statute law of Montana were upheld as not contrary to the provisions of said Section 10, of article 1 of the United States Constitution, the plaintiff says that said persons in pursuance of said fraudulent scheme, being in control of said defendant corporation, Parrot Silver and Copper Company, are causing said defendant corporation, Parrot Silver and Copper Company, to insist on said appraisal under said Statute whereby no remedy or arrangement is provided for the assets of said corporation being valued at the real amount at which it ought to be valued, without deduction of the assets depleted and diminished in pursuance

of said fraudulent scheme by said persons who now have control of both of said defendant corporations and of the assets existing which have been depleted, and as the plaintiff is informed and believes and therefore charges, are able to account for the assets wasted and destroyed and unaccounted for as hereinbefore stated, and if said appraisal be made there be no provision in said Statute for the value of the plaintiff's share in said assets as stated. He will be deprived of his true and just value of his shares in said assets without remedy therefore and without due process of law, and said Statute made to constitute a part of the scheme of the said persons so confederating and conspiring as aforesaid to obtain said assets remaining

15 of said defendant corporation, Parrot Silver and Copper Company, in consummation of said scheme.

22. The plaintiff says that he requested the right to examine the books of the defendant corporation, Parrot Silver and Copper Company, from its officers and, after some delay, was shown certain books thereof. That upon their inspection and by inquiry from others and various records and people, first found out since said April 1910, of the acts of said persons in pursuance of said fraudulent scheme, and the diminution and depletion of the assets of said defendant corporation, Parrot Silver and Copper Company, as herein set forth and that no books of account in true and accurate form existed; and was informed by said officers that he could see no other books nor account whereby any true and fair value of the assets of said defendant corporation, Parrot Silver and Copper Company, could be obtained.

24. Upon such examination as the plaintiff has been allowed to make, and from inquiries is informed and believes and therefore charges, that, in pursuance of said fraudulent scheme, the actual valuation of the ore in the properties of the defendant corporation, Parrot Silver and Copper Company, has been and is now wilfully concealed by said persons confederating and conspiring as aforesaid, and no fair or just appraisal can be obtained of the same by the plaintiff and that the value of said property taken in connection with the value of all the adjacent mines is \$50,000,000, and said ore can be continuously mined for the term of fifty years hereafter at a profit, as the plaintiff is informed and believes and therefore charges, and that the dumps and tailings of said mines of defendant corporation, Parrot Silver and Copper Company which are reckoned as worthless by said persons and said defendant corporation, Parrot Silver and

16 Copper Company, are worth as the plaintiff is informed and believes and therefore charges the sum of \$5,000,000.

25. That all of said conveyances caused to be made by the said persons in pursuance of said fraudulent scheme were made to diminish and deplete the assets of the defendant corporation, Parrot Silver and Copper Company, and against the objection and without notice to the plaintiff.

26. Said minority stockholders and the plaintiff have repeatedly protested and objected to the management and direction of the mining properties of the defendant corporation, Parrot Silver and Copper Company, that said protests and objections have been rendered useless by reason of the control of said persons and their increasing pur-

pose to carry out such fraudulent scheme to obtain the assets as aforesaid, and no answer has been made to any of said protests or objections.

27. The transfer of the stock of the said defendant corporation Anaconda Copper Mining Company, in exchange for the conveyance of the assets of the defendant corporation, Parrot Silver and Copper Company, was arranged upon the basis of \$2,300,000, the value of the capital stock at par for 90,000 shares of the defendant corporation, Anaconda Copper Mining Company, said shares being issued as additional stock upon its acquisition of the assets of the defendant corporation, Parrot Silver and Copper Company, at \$25.00 par value per share.

28. Said persons, in pursuance of said fraudulent scheme, conspiring and confederating as aforesaid, by their control as aforesaid, intend to allow in said transfer the value only of what is called the quick assets of the mines of the defendant corporation, Parrot Silver and Copper Company, irrespective of the value of the large bodies of ore and the dumpings and tailings and of the properties sold and conveyed as before specified, and the surface properties which
17 were of the assets of the defendant corporation, Parrot Silver and Copper Company.

29. Said conveyance and transfer caused to be made by the said persons in pursuance of said fraudulent scheme, conspiring and confederating together as aforesaid, of all the remaining assets of the defendant corporation, Parrot Silver and Copper Company, is the final act of said persons in their scheme to defraud the plaintiff and other minority shareholders of their rights to and value of the assets of the said defendant corporation, Parrot Silver and Copper Company, and to prevent any accounting by said persons for said properties, or for the ore and properties taken by the defendant corporation, Anaconda Copper Mining Company, or of the depletions and diminutions, before stated, and to recapitulate, the plaintiff is informed and believes and therefore charges, that such sums amount at least to the value of \$100,000,000, and which added to the present value of the property as the plaintiff is informed and believes, and therefore charges, and now fraudulently concealed from said plaintiff and the other stockholders, amount altogether to the amount of \$200,000,000, which is the true value, as the plaintiff believes and charges of the assets of the defendant corporation, Parrot Silver and Copper Company, to which he is entitled as shareholder.

30. By said conveyance from the defendant corporation, Parrot Silver and Copper Company, to the defendant, Anaconda Copper Mining Company, if confirmed and allowed, the plaintiff will be deprived of his right in the assets as a shareholder of said defendant corporation, Parrot Silver and Copper Company, and said conveyance is fraudulent and void, and, by any appraisal under the Statute of the State of Montana, the plaintiff will be unjustly deprived of his
18 rights as shareholder in said defendant corporation, Parrot Silver and Copper Company without due process of law, and the same is in fraud of the rights of the plaintiffs as shareholders, and the plaintiffs have persistently applied to the officers

of the said defendant corporation, Parrot Silver and Copper Company, to make true statements and accounts and restore the assets to their true and real value thereof and has been refused and denied.

31. The defendant, Anaconda Copper Company, without regard to the rights of the plaintiffs heretofore alleged, which the plaintiffs believe and therefore charge were known, with the facts heretofore alleged, to the said defendant, Anaconda Copper Company, and to said defendant, Parrot Silver and Copper Company, and were caused to be done in exercise of the power of control of said Anaconda Copper Company, and were acts and doings in preparation for the commission of the acts hereinafter alleged, and the said defendant, Anaconda Copper Company, having acquired the control of the copper ore mined in said State of Montana, or the greater part thereof, and especially within the district known as the Butte Mining District, and of the converting and smelting of said copper ore within said district, and the control of the production of said ore, which is distinctive from that elsewhere mined, and, as an article of commerce, is requisite, or used, to furnish tensile strength to copper mined in other districts, and said Anaconda Copper Company, as the plaintiffs are informed and believe, and therefore charge, having secured control by contract or otherwise in pursuance of its purpose, of the United Metals Selling Company, a corporation of the State of New Jersey, and having arranged by contract or otherwise made, in pursuance of its purpose, for all the copper produced as aforesaid to be transported beyond the State of Montana to the Raritan Copper Company, a corporation of Raritan, New Jersey, then and there under its control for refining, and then transferred for sale to the said United Metals Selling Company to
19 be sold by said Company, as an article in interstate and foreign commerce under the direction of the said defendant

Anaconda Copper Company, from its headquarters in New York City in the State of New York, where it had its officers and the offices of the defendant, Parrot Silver and Copper Company, and the United Metals Selling Company and other companies, which it had absorbed or assimilated, as the plaintiffs are informed and believe and therefore charge, for the purpose of controlling the production transfer and sale of copper among the States and foreign countries and with the intention and purpose to regulate the price, sale and transportation of copper, especially the distinctive copper referred to, in other States and foreign nations, as part of the Commerce between the several states and foreign nations, and the said defendant, Anaconda Copper Company, contracted to purchase the capital stock of the defendant, Parrot Silver and Copper Company, on or about April 30, 1910, well knowing as the plaintiffs are informed and believe and therefore charge, of the destruction of the economic entirety of the defendant Parrot Silver and Copper Company and in furtherance of its purpose to control the production, sale and transportation as aforesaid and to suppress the competition of the defendant, Parrot Silver and Copper Company, by transfer under said contract of all the assets of the defendant Parrot Silver and Copper Company, on May 31, 1910, which contract and combination be-

tween the said defendant, Anaconda Copper Company, and said defendant, Parrot Silver and Copper Company, and transfer are contrary to the provisions of section 1 of the Act of the United States July 2, 1890, chapter 647.

32. The said defendant Anaconda Copper Company being in the control of the copper output reduction and smelting thereof in the State of Montana, or the principal part thereof, and in control by contract or otherwise, as the plaintiffs are informed and believe, 20 and therefore charge, of the mining, sale and transportation of copper, especially of the distinctive copper mined in the State of Montana, and the sale and transportation to other States and foreign countries and the control of the price thereof, on or about the 30th day of April 1910, did attempt to monopolize the production, sale transfer and price of copper by contract and purchase of the assets of the defendant corporation, Parrot Silver and Copper Company, and suppress the competition thereof and to combine and conspire with the said defendant, Parrot Silver and Copper Company, and attempt to monopolize a certain part of the trade or commerce among the several States and foreign nations, to wit; the trade in copper and especially the distinctive copper mined in Montana, and in pursuance thereof, on or about May 31, 1910, caused to be delivered to said defendant, Anaconda Copper Company, a deed of the assets of the defendant, Parrot Silver and Copper Company the same being an illegal act and contrary to provisions of section of chapter 647 of the Acts of the United States, July 2, 1890.

Wherefore the plaintiffs pray:

1. The conveyance and transfer by the defendant corporation Parrot Silver and Copper Company made May 31, 1910, be declared to be fraudulent, illegal and void and it may be decreed that the same be set aside.

2. The defendant corporation Anaconda Copper Mining Company be ordered to re-convey, all the property conveyed to it by the defendant corporation, Parrot Silver and Copper Company, by deed dated May 31, 1910, to the Parrot Silver and Copper Company or such person as the Court may appoint or direct to receive the same.

3. A receiver may be appointed to take possession of the books, papers, accounts, assets and properties conveyed by the defendant corporation Parrot Silver and Copper Company to the Anaconda Copper Company.

21 4. Account may be taken of all the dealings between the defendant, Parrot Silver and Copper Company, and the defendant corporation Anaconda Copper Mining Company, and the balance found due from the Anaconda Copper Mining Company be ordered to be paid to the receiver duly appointed by this Court.

5. That the books, papers, accounts vouchers and memoranda of the defendant corporations, be produced and placed with the Clerk of the Court or the receiver duly appointed by the Court, and the plaintiff, his solicitor, agent or counsel be at liberty to inspect and take in any form copies of, or extracts therefrom as he may be advised at his own expense under such regulation as the Court may order.

6. The receiver duly appointed by this Court may be ordered to recover the assets of the defendant Corporation Parrot Silver and Copper Company, fraudulently removed, concealed or unaccounted for, as set forth in this bill of complaint and to recover the value of any assets of said defendant corporation Parrot Silver and Copper Company, destroyed or any moneys used fraudulently and illegally.

7. That the receiver may be ordered and directed to sell the assets of the defendant corporation Parrot Silver and Copper Company, at such times, in such manner and upon such terms as to this Court shall seem meet and proper, and the just and proportionate share thereof remaining from said sale and the assets in the hands of said receiver shall be paid to the plaintiff and other shareholders of the defendant corporation Parrot Silver and Copper Company.

8. That injunction may issue until the further order of the Court restraining the defendant corporation Anaconda Copper Mining Company, from conveying or encumbering any of the property conveyed to it by the defendant corporation Parrot Silver and Copper Company, May 31, 1910.

22 9. That injunction may issue restraining the defendant corporations or either of them from proceeding in any State Court to confirm the conveyance of May 31, 1910, from the defendant corporation Parrot Silver and Copper Company, to the defendant corporation Anaconda Copper Mining Company, and from taking any proceeding in any State Court to have any appraisal made or any appraisers appointed under the Statute of the State of Montana, wherein the plaintiff is made a party.

10. And to the end that the defendants may if they can show why the plaintiff should not have the relief herein prayed for and may full, true direct and perfect answer make, to the best of their knowledge, remembrance, information and belief, without oath which is hereby waived, to each and all of the matters and things in this bill contained, the plaintiff prays a writ of subpoena issuing out of, and under the seal of, this Court directed to each of the defendants commanding them on a certain day and under a certain penalty therein named to appear before this Court and then and there full, true, direct and perfect answer make to all and singular the premises, and further perform and abide by such order and decree as to the Court shall seem meet.

11. And such other and further order, relief and decree may be made in the premises as to your Honors may seem meet and justice and equity may require.

WILLIAM E. WALL.
LOUIS FOSS.

HARRISON DUNHAM, *Counsel.*

23 STATE OF MASSACHUSETTS,
County of Suffolk, ss:

On this twenty-third day of December 1910, before me personally appeared William E. Wall and Louis Foss, who being duly sworn, depose and say that they are the plaintiffs in the foregoing bill of complaint, by them read and subscribed; that they know the con-

tents thereof and the same is true to their own knowledge, except such matters as are therein stated on information and those they believe to be true.

WILLIAM E. WALL.
LOUIS FOSS.

Sworn and subscribed to, before me, this 23rd day of December 1910.

[SEAL.]

GEORGE W. GREEN,
Notary Public.

Filed Jan. 9, 1911. Geo. W. Sproule, Clerk. By Harry Drumm, Deputy.

24 Thereafter, on April 2, 1914, by leave of court, certain amendments to the Bill were duly made and filed, being as follows, to wit:

25 In the District Court of the United States for the District of Montana.

No. 464.

WILLIAM E. WALL and LOUIS FOSS, Complainants,
vs.

ANACONDA COPPER MINING COMPANY, a Corporation, and PARROT SILVER AND COPPER COMPANY, a Corporation, Defendants.

Amendments to Bill of Complaint of William E. Wall and Louis Foss, citizens and residents of the State of Massachusetts and the complainants in the above entitled action, on leave of court in that behalf first had and obtained, bring these, their amendments, to the bill of complaint filed herein against the said defendants, Anaconda Copper Mining Company, a corporation, and Parrot Silver and Copper Company, corporations created and existing under the laws of the State of Montana.

Thereupon, your orators, complainants, file amendments to their said bill of complaint herein as follows:

Substituting for paragraphs 31 and 32 the following amendments:
Substitute, Paragraph No. 31—

That, at the time of filing the original bill of complaint, and at all the times thereafter mentioned, said William E. Wall and Louis Foss were citizens and residents of the State of Massachusetts, residing at the said City of Boston, in the County of Suffolk and State of Massachusetts. That at all of said times, the Anaconda Copper Mining Company and the Parrot Silver and Copper Company, are and were corporations created and existing under the laws of the State of Montana, with their principal place of business and their domiciles in said State of Montana.

26 Substitute for paragraph No. 32—

That the value of the matter in dispute in this suit exceeds

the sum of Three thousand (\$3,000.00) dollars, exclusive of interest and costs.

Wherefore, your orators pray as already prayed in their bill of complaint, and for the same relief.

ASA P. FRENCH,
HARRISON DUNHAM,
R. L. CLINTON,
Solicitors for Complainants.

Filed April 2, 1914. Geo. W. Sproule, Clerk.

27 Thereafter, on July 3, 1911, the Answer of defendant Parrot Silver & Copper Company was duly filed herein, being in the words and figures following, to wit:

28 In the Circuit Court of the United States, Ninth Circuit,
District of Montana.

No. 464. In Equity.

WILLIAM E. WALL and LOUIS FOSS, Complainants,
versus

ANACONDA COPPER MINING COMPANY, a Corporation of Montana,
and Parrot Silver & Copper Company, a Corporation of Montana,
Defendants.

Answer of Defendant Parrot Silver & Copper Company.

This defendant, reserving all manner of exceptions that may be had to the uncertainties and imperfections of the bill, comes and answers thereto, or to so much thereof as it is advised is material to be answered, and says:

1. The defendant admits that the plaintiffs, William E. Wall and Louis Foss, are stockholders in the defendant company, and that said complainants are the owners of 1210 shares of stock of said defendant corporation.

Admits that said complainant Wall has been such shareholder since April, 1900, and that said Foss has been such shareholder since April, 1908; and further admits that the said complainants were, at the time of the transaction of sale of the assets of the said defendant corporation to the defendant Anaconda Copper Mining Company, shareholders of this defendant.

29 2. Defendant denies that on or about the 4th day of April, 1899, or at any other time, or at all, certain persons, to wit, Sidney Chase, F. P. Addicks, A. W. Bemis, Charles D. Burrage, R. D. Willard, John E. Judson, C. H. Dickey, John D. Ryan, B. B. Thayer, A. B. Grafius, H. A. Gallway, A. H. Melin, F. Lothrop Ames, Albert C. Burrage, William Rockefeller, H. H. Rogers, Urban H. Broughton, H. I. Meehan, or any other persons whomsoever, or at all, procured the control by the purchase of a majority of the

stock of this defendant company; but alleges the fact to be that on or about the said date, the Amalgamated Copper Company, a corporation organized under the laws of the State of New Jersey, purchased the control of the stock of this defendant; and further alleges, upon information and belief, that certain of the above named persons were interested in the said Amalgamated Copper Company as officers and shareholders thereof.

Defendant denies that the management and control of this corporation was under the direction and control of the above named persons, or of any other persons whomsoever, except its duly and regularly constituted officers and directors.

3. Defendant denies that the said persons described in said paragraph 2 of said complaint, or any of said persons, or any persons whomsoever, ever combined or confederated together, or ever entered into any conspiracy of any kind or character, or that they, or any of them, ever did in fact, make any false or fraudulent scheme to fraudulently or otherwise lessen, diminish or deplete the assets of this defendant company; or to acquire the assets of this company after said fraudulent diminution and depletion, charged in paragraph 3 of said complaint, at a value less than the real value thereof, or at all.

Denies that by any scheme, fraudulent or otherwise, the said persons sought to or did deprive the minority shareholders, of whom are the plaintiffs, of the just or fair value of their right or interest as shareholders in this defendant company, or at all. Denies that the said persons, or any of said persons, or any other persons whomsoever, have ever sought to prevent a just or fair appraisal of the value of the stock of said minority shareholders, and particularly of the said complainants, or either of said complainants herein.

Denies that in pursuance of said fraudulent scheme, charged in said bill, or otherwise or at all, the assets of this defendant, were diminished or depleted in any manner whatsoever, or at all; and denies that said assets were depleted in any manner or for any purpose, save in so far as by proper and necessary mining operations, the mines and ore bodies of this defendant were to a certain extent depleted.

4. Defendant denies that in pursuance of the conspiracy and fraudulent scheme alleged in said bill, or by virtue of any conspiracy or any scheme, the persons alleged in said bill, or any of said persons, or any other persons whomsoever, ever controlled the affairs of or dictated the policy of this defendant for any unfair or improper purpose. Denies that the affairs of this defendant were directed with the intention to defraud the minority shareholders, or any of said shareholders, and particularly denies that the affairs of the company have been so directed as to defraud the complainants, or either of said complainants, or to keep the stockholders of said defendant, or the complainants, or either of them, in ignorance of the financial or other condition of the company, or of any diminution or depletion of assets during any period whatsoever; and denies that there was any scheme, conspiracy or intention to diminish or deplete the assets of the company until a final or other transfer

of all or any part of the assets of the said corporation could have been arranged, or until any other time, or at all.

5. Defendant admits that it was incorporated under the laws of the Territory of Montana in the year 1880, and that its charter was renewed in 1897 for a period of twenty years under the laws of the State of Montana.

Admits that the par value of its capital stock in 1898 was \$2,300,000.00; denies that its debt was \$25,000.00; and alleges on the contrary that in April, 1899, the total indebtedness of this defendant was more than \$79,000.00.

Defendant admits that the par value of its shares was \$10.00 per share, and that the number of shares of stock into which its capital was divided was 230,000 shares; admits that its surplus at that time, as shown by the books of the defendant, was \$1,898,964.00. Admits that its assets consisted of mines, mining properties, water privileges, surface lands, ditches, canals, smelters, reduction works, shafts, dumps, tailings, tools and works used in and belonging to the same, situated in the State of Montana. Denies that it ever owned any refinery; and alleges that it did own, in the manner hereinafter set forth, the stock of the Bridgeport Copper Company, which said corporation owned a certain refinery, with wharves, buildings and premises, located at or near Bridgeport, in the State of Connecticut.

32 Admits that some of the mines of the defendant were situated in about the middle of the mining district of Butte, in said State of Montana; denies that all of the adjacent mines were or are of large value; but admits and avers that some mines adjacent to the property of this defendant were and are of large value. Denies any knowledge or information sufficient to form a belief, and denies that it has any belief, as to whether or not the mines adjacent to the mines of this defendant were or are under the control of the persons whom it is charged in said bill confederated and schemed as therein alleged. Admits that from certain mines which are adjacent to some of the property of this defendant, ore containing copper has been more or less continuously mined. Denies that all mines which are adjacent to the property of this defendant have been, or now are, continuous producers; denies that the output of ore increases as those mines which have been producers reached a lower depth. Denies any knowledge or information sufficient to form a belief, and denies that it has any belief, as to what condition exists in mines not owned by this defendant, 200 feet below the level of the workings of the mines formerly owned by this defendant.

6. Denies that in pursuance of said fraudulent scheme and conspiracy, or of any fraudulent scheme or conspiracy, the said persons alleged in said bill of complaint to have so entered into a fraudulent scheme and conspiracy, or any persons whomsoever, caused the stock of the Bridgeport Copper Company, all of which this defendant held directly or indirectly, to be voted that the affairs of the said Bridgeport Copper Company be wound up and the refin-

33 ing plant of said company at Bridgeport be closed and dismantled. Defendant admits, as will hereafter be more fully set forth, that it did cause the said Bridgeport Copper Company's plant to be dismantled and its affairs to be wound up. Denies that there existed between the said Bridgeport Copper Company and this defendant a contract which was profitable to this defendant. Admits that the premises were sold in 1910. Denies that said premises and assets of the said company were sold for \$45,000.00, and alleges that the aggregate sum received from the sale and assets of said company was \$99,558.23. Denies that by any action taken by this defendant in causing a cancellation of any contracts existing between it and the said Bridgeport Copper Company, or in dismantling or winding up the affairs of the said Bridgeport Copper Company, the assets of this defendant company were diminished in the sum of \$300,000.00, or at all.

Denies that the said Bridgeport Copper Company's property was of the value of \$345,000.00; denies that there has been or will be any loss of profit accruing to this defendant by reason of the fact that the refining of its ores at said Bridgeport refinery was discontinued. Denies that any ores ever produced by this defendant were transferred to or treated by the United Metals Selling Company, but avers that said United Metals Selling Company did, as will more fully hereinafter appear, refine certain metals produced from the ores mined by this defendant company. Denies that the returns of the refining works of the United Metals Selling Company were completely or at all under the direction and control of the persons alleged in said bill of complaint to have entered into a conspiracy as against this defendant. Denies that the said United Metals Selling Company so managed or controlled its affairs or returns that a loss resulted to this defendant corporation. Denies that the real and

34 actual profits, if any, obtained from the refining of the ores of this defendant company, so far as said profits accrued to this defendant company, were ever concealed from or that the same have not been known to the minority stockholders, or to the complainants.

And further answering so much of said bill of complaint of complainants as refers to the charge that this defendant, or any of the persons named in said bill of complaint, or any of said persons, were guilty of any fraudulent scheme or purpose, in causing refining operations to be discontinued at the said refining plant of the said Bridgeport Copper Company, this defendant alleges the facts to be as follows, to wit:

The Bridgeport Copper Company was a corporation organized under the laws of the State of Connecticut in 1885, possessing a capital stock of \$50,000.00, of the par value of \$100.00 each; that thereafter, in the year 1886, the capital stock of the company was increased to \$100,000, divided into 1,000 shares of the par value of \$100.00 each; that thereafter, during the year 1892, this defendant corporation purchased 997 shares of the capital stock of the said Bridgeport Copper Company, out of the total issue of 1,000 shares, and continued to have the copper matte produced at its smelter,

located in the vicinity of Butte, refined by the said Bridgeport Copper Company.

Defendant further alleges that thereafter, to wit, on or about the 24th day of February, A. D. 1905, it entered into a contract by which the matte produced by this defendant was refined by the Raritan Copper Company, and the product thereof sold.

35 Defendant alleges that at the date when the contract last above mentioned was entered into, the plant of the Bridgeport Copper Company had become antiquated and ill adapted for the purposes of refining copper matte; that progress and advancement had been made in the art of refining copper, and that it was greatly to the advantage of this defendant to make and enter into the contract as aforesaid, as it was thereby enabled to have its copper matte refined, and the metals therein contained recovered, at a much less cost than it was costing the said defendant to conduct the same operations at the said refining plant of the Bridgeport Copper Company, and at a cost much less than that which would have enabled defendant to have remodeled and rebuilt its said Bridgeport plant.

Defendant further alleges that in pursuance of a sound business policy, and impelled only by a desire to serve the interests of this defendant and its stockholders the operations of the said plant of the said Bridgeport Copper Company were discontinued and said plant was subsequently dismantled, and the property belonging to the said Bridgeport Copper Company was sold for the sum of \$99,558.23, which said purchase price was a fair and adequate consideration for the said property.

Defendant further alleges that the result of the foregoing transaction was to increase the profits obtained by the defendant from its mining operations, and to benefit the stockholders of this defendant, including the said complainants.

7. Defendant denies that in pursuance of any fraudulent scheme or conspiracy, either on its part or among the persons alleged in said bill of complaint to have so conspired, or any persons whomsoever, or in furtherance of any conspiracy or fraudulent

36 scheme by any persons whomsoever, the machinery of the smelting plant of the defendant corporation Parrot Silver & Copper Company, was removed from Butte or placed in the reduction works of the defendant Anaconda Copper Mining Company; but defendant admits that certain machinery was sold as hereinafter set forth, to the said Anaconda Copper Mining Company. Denies that the said reduction works of the Anaconda Copper Mining Company were under the control of said persons, or any of said persons. Denies that by virtue of any contract for smelting the ores of this defendant company, this company suffered any loss, or that the smelting returns of the Anaconda Copper Mining Company were kept under the control of said persons, or any of said persons, or that no true or accurate returns of said smelting operations were ever made by the Anaconda Copper Mining Company to the directors of this defendant, or that the true returns of said smelting operations were concealed or kept by said persons mentioned in said bill of complaint, or any of said persons, for their

own advantage, or in pursuance of any fraudulent scheme as therein charged.

8. Denies that the assets of this defendant company were diminished by the value of said smelter, which is charged in the said bill of complaint to have been of the value of seven hundred thousand dollars, and denies that by abandoning said smelter and discontinuing operations thereat, the assets of this defendant company were diminished in said sum, or any other sum, or at all. On the contrary, this defendant alleges that it had been for a long time the owner of a certain smelting plant located in the vicinity of

the City of Butte, County of Silver Bow, State of Montana;
37 that said plant had been in existence for many years and was, on or about the month of October, 1899, in a dilapidated, greatly depreciated and worn out condition; that owing to the advancement which had been made in metallurgical processes involved in the smelting and reducing of ores similar to those produced by this defendant, said plant was no longer suitable for carrying out the purposes for which it originally had been designed, and for which it originally was built, to wit, the smelting and reduction of the ores produced by this defendant; that this defendant company, in order to supply a new and modern plant, wherein to carry on the metallurgical operations of this defendant, purchased a smelting site in the vicinity of Gaylord, in the County of Jefferson, State of Montana; that the defendant had expended more than \$700,000.00 in the construction of said plant, and that it proposed to spend a large sum of money, amounting to several hundreds of thousands of dollars, in completing the said plant; that on or about the year 1899, the management of this defendant was changed, and upon investigation it was found that it was impracticable to complete the said smelting plant at Gaylord for the reason that the sums of money which would be required to complete and equip the same would amount to many thousands of dollars, and no satisfactory or adequate return would or could be realized therefrom; that in addition to the amount of money which it would cost to complete said plant, the same was not suitably located or situated with reference to the mines of this defendant, and that it would have been necessary to transport the ores mined by the defendant corporation thereto over heavy mountain grades, at excessive freight and other charges, making it impossible to conduct the operations of the defendant company at a
38 profit, if the plan of building and completing the said smelting plant at Gaylord had been carried out, and the ores mined by this defendant had been transported thereto for reduction.

9. Defendant avers that its plant at Butte was no longer suitable for smelting and treating its ores; that about the year 1901, the Washoe Copper Company, a corporation organized under the laws of the State of Montana, had built and fully equipped a modern and complete copper smelting plant in the vicinity of the town of Anaconda, in the County of Deer Lodge, State of Montana; that said Washoe Copper Company had leased its said smelt-

ing plant to the defendant Anaconda Copper Mining Company, and the Anaconda Copper Mining Company was conducting smelting operations thereat. That on or about the — day of August, A. D. 1899, a contract was entered into between this defendant and the defendant Anaconda Copper Mining Company for the treatment of all of the ores produced by this defendant at the said smelting plant operated as aforesaid by the said Anaconda Copper Mining Company; that the terms of said contract, providing for the payments to be made by this defendant for the treatment of its said ores at said smelting plant were greatly to the advantage and benefit of this defendant company; that as a result of said contract this defendant company was enabled to have its ores treated at the said smelting plant, wherein, by reason of the modern and efficient means, and processes furnished for so doing, this company was enabled to save large sums of money over and above the amount which it would have cost this defendant company to have continued reducing its said ores at its said smelting plant located in the vicinity of Butte, and also that the said defendant was
39 enabled to have its said ores treated at a cost much less than it would have cost this defendant to have completed the said proposed smelting plant at Gaylord, and to have conducted operations thereat.

Defendant further avers that prior to the change of management as aforesaid, the treasury of this defendant company had been so depleted that in order for it to have completed the said Gaylord smelting plant, it would have been necessary for it either to have increased greatly the capital stock of the said company, and sold the same, or to have encumbered its properties, in order that loans, which it would have been necessary to have made to have procured funds to have proceeded with the construction and completion of the said Gaylord smelting plant might be secured.

Defendant further alleges that said contract is and was in all of its terms and conditions essentially fair and equitable and favorable to this defendant. That the Anaconda Copper Mining Company, acting under said contract, and in accordance with the terms thereof, has at all times rendered to this defendant company full and complete statements showing the amount of ore received by it from this defendant company, the amount of metal contents contained in said ores, the cost of treating the same, and has accounted justly and fairly to this defendant for all of such metal contents. That the charge contained in the said bill of complaint that by virtue of said contract, or by virtue of the dismantling of the said plant at Gaylord, or at Butte, there resulted a loss or damage to this defendant, is wholly untrue; and this defendant alleges that on the contrary such action on the part of this defendant, in so entering as aforesaid into said contract, resulted in saving to it
40 and ultimately to its shareholders, of large sums of money.

Defendant denies that in pursuance of said fraudulent scheme charged in said bill of complaint, or of any fraudulent scheme, or at all, the persons mentioned in said bill of complaint, or any of said persons, or any persons whomsoever, or at all, procured machinery of the value of \$750,000.00 to be obtained and

paid for by the defendant corporation Parrot Silver & Copper Company, about the year 1901, or at any other time or at all, to be used by the said company in the smelting works at Gaylord, Montana; denies that machinery of said value was by said persons, or any of said persons, or any persons whomsoever, procured to be purchased and paid for and then delivered to the Anaconda Copper Mining Company; denies that the Anaconda Copper Mining Company was under the control or direction of the said persons charged in said bill of complaint, or of any of said persons; denies that no payment was made by the Anaconda Copper Mining Company, or account thereof rendered to the stockholders of this defendant; denies that by reason of any act of this defendant in this connection, or at all, the assets of this defendant were diminished in the sum of \$750,000.00, or any other sum.

Defendant further alleges that some machinery which was formerly used at its said reduction plant at Butte, and some machinery which had been purchased for installation at its said reduction works at Gaylord, and which had become wholly worthless to the defendant, was sold by this defendant to the Anaconda Copper Mining Company; that the Anaconda Copper Mining Company purchased the said machinery and paid to this defendant a fair and satisfactory price, to wit, the sum of about \$71,000.00, in consideration for the same. Defendant therefore denies that it

41 or its shareholders were damaged in the amount set forth in said complaint, or in any amount whatsoever, by reason of any of the aforesaid transactions.

Defendant denies that the dismantling of the said plant of this defendant at Gaylord, Montana, resulted in damage to the extent of \$1,000,000.00, or of any other sum whatsoever to this defendant; and alleges on the contrary, as hereinbefore stated, that such action resulted in benefit and advantage to this defendant as hereinbefore set forth.

Defendant denies that the said persons mentioned in said complaint, or any of said persons, or any persons whomsoever, in pursuance of any fraudulent scheme, or otherwise, or at all, ever caused large or any quantities of ores of great or any value, to be taken from the mines or other property of this defendant through shafts or workings of said defendant Anaconda Copper Mining Company, or through shafts or workings of any person or corporation whomsoever, or at all; or that the said ores were caused to be shipped to the smelter and reduction works of the said Anaconda Copper Mining Company, at great or any expense of freight, hauling and handling, save and except fair and reasonable rates therefor. Denies that said ores, or any ores, belonging to this defendant, were reduced, smelted or treated by the Anaconda Copper Mining Company at an expense greatly in excess of the cost of smelting said ores, or what said cost would have been had said smelting plant or works of this defendant at Butte been maintained, or in excess of what was a proper or reasonable charge to have been made. Denies that any ore ever shipped by this defendant, or taken from the properties of this defendant, was never sampled or weighed in a true and accurate manner, and

denies that no true or accurate account thereof was kept.
42 Denies that the assets of this defendant company were diminished in any way, or that excessive charges or other charges, except such as were fair and reasonable, were made, and denies that no payment has ever been made by the defendant Anaconda Copper Mining Company for whatever ores were shipped by it from the properties of this defendant. Denies that the defendant has been damaged thereby in an amount in excess of \$5,000,000.00, or that the defendant has been damaged in any other sum, or at all.

10. And further answering so much of said bill of complaint as is contained in paragraph 10, this defendant avers that at no time, nor in any manner, has there ever been taken from the properties of this defendant by the Anaconda Copper Mining Company, or through any agency owned or controlled by it, or by any of the persons alleged in said bill of complaint to have done so, or by any persons or corporations other than this defendant, any valuable or other ore from the properties of this defendant; but avers that for all ores which this defendant either shipped or caused to be shipped to the Anaconda Copper Mining Company, full, true and accurate account was kept thereof; alleges that all of said ores were weighed in a true and accurate manner, and a true and accurate account of said ores kept; that the charges which were made for treating said ores were reasonable, and that statements thereof have been made to the officers and directors of the defendant company and to the shareholders thereof.

11. Denies that in pursuance of the fraudulent scheme alleged in said bill or of any scheme, the said persons alleged in said bill of complaint to have so confederated and conspired together, or any
43 of said persons, or any other persons whomsoever, on or about September, 1906, or at any other time, or at all, caused any ores or minerals which belonged to this defendant or to any veins, lodes or other bodies of ore of great or any value, which belonged to this defendant, called the "Blue Vein," or any other vein, to have been conveyed without consideration, to the Red Metal Mining Company, or to any other corporation; denies that by virtue of the transfer of any property of this defendant to the said Red Metal Mining Company, this defendant was damaged to the extent of \$50,000,000, or any other sum, or at all; and denies that said persons had control of the said Red Metal Mining Company.

And, further answering so much of said bill of complaint as is contained in paragraph 11, this defendant avers that in the month of September, 1906, it was, and for a long time prior thereto had been, the owner of certain quartz lode mining claims located and situated in the vicinity of the City of Butte, County of Silver Bow, State of Montana; that lying adjacent to, and in the vicinity of certain mining claims which belonged to this defendant, was a certain mining claim known and designated as the Nipper quartz lode mining claim; that on or about the 21st day of December, 1906, the Red Metal Mining Company became the owner of an undivided 31/36 interest in and to the said Nipper quartz lode mining claim; that prior to the said transfer of the said interest in the said Nipper quartz lode mining claim to the said Red Metal Mining Company,

the predecessors in interest of the said Red Metal Mining Company in the said Nipper quartz lode mining claim, and this defendant, had been, and were, engaged in numerous controversies over the ownership of certain veins and ore bodies lying within and beneath
44 the surface of the said Nipper quartz lode mining claim, and of the said quartz lode mining claims owned, as aforesaid, by this defendant, and particularly over the ownership of the said Blue Vein; that numerous actions at law and suits in equity had been brought by the respective owners of the said mining claims for the purpose of determining said controversies, and for the recovery of damages each from the other, on account of alleged trespasses upon certain ore bodies which the said parties each claimed to own. That the title to said ore bodies, or rights of this defendant, or of the said Red Metal Mining Company, or its predecessors in interest, in or to any of said veins or ore bodies, had not been decided by any court of last resort, as charged in said bill, or by any other court. On the contrary, none of said actions involving said ore bodies, to which this defendant was a party, had been finally tried, nor had any judgment finally determining the rights of the parties, been rendered in any of said suits or actions. That subsequent to the acquisition of the said interest in the said Nipper quartz lode mining claim by the said Red Metal Mining Company, negotiations for the settlement and adjustment of the said controversies were begun, and by mutual consent and agreement, duly submitted to the shareholders of this defendant, and authorized by them, and certain boundary lines and planes were established, fixing and defining the rights of the respective parties to said litigation in and to the ore bodies and veins in question. That the said agreement was in all respects fair and equitable to this defendant and to its shareholders, and resulted in fully protecting and preserving the rights of this defendant in and
45 to the said ore bodies and veins, and relieved this defendant from the necessity of expending large sums of money in developing said veins and ore bodies in order to establish its right thereto. Defendant further avers that it was to the mutual advantage of this defendant and the Red Metal Mining Company to enter into said agreement settling and adjusting said controversy, and fixing and establishing the rights of the said Red Metal Mining Company and this defendant in and to the veins and ore bodies in question, and that such action was taken by this defendant with a view of conserving the best interests of this defendant and its shareholders, including the said complainants. Denies that any portion of the Blue Vein, so relinquished by defendant was capable of producing 1,000 tons of ore per day, and alleges on information and belief, that no portion of said vein conveyed by this defendant has ever produced any ore.

12. Denies that in pursuance of the fraudulent scheme charged in said bill, or of any fraudulent scheme, or otherwise, or at all, the said persons mentioned in said bill, or any other persons whomsoever, or this defendant, sold realty belonging to this defendant company, to J. W. Pace, in trust for said persons mentioned in said bill, or otherwise, or at all. Denies that this defendant ever owned any realty in the vicinity of Helena, Montana, and denies that it has

any knowledge or information sufficient to form a belief, and denies that it has any belief, as to the transactions set forth in paragraph 12 of said bill of complaint.

13. Denies that in pursuance of said fraudulent scheme, or of any scheme, the said persons charged in said bill with having confederated and conspired together as therein charged, or any persons whomsoever, on or about March, 1908, or at any other time or at all,

46 caused to be sold to Ike E. O. Pace, of Montana, without any consideration, realty of the defendant corporation described in said paragraph 13. Alleges that so far as the transaction set forth in said paragraph 13 is concerned, this defendant on or about the 12th day of July, A. D. 1906, sold and conveyed a certain tract of land described as follows, to wit:

"The south half of the northwest quarter (S.-2 N. W.-4) and the north half of the southwest quarter (N.-2 S. W.-4) of Section No. 4, Township one (1) north, Range four (4) west, of the principal Montana base and meridian; said lot or parcel of land, hereby conveyed, being located about half a mile westerly from the town of Whitehall, in said Jefferson County, Montana," for a valuable consideration, to wit, the sum of \$1,100.00 to the said J. W. Pace; and alleges that the said consideration was an adequate and ample consideration for said tract of land, and that the sale of the same resulted in benefit to this defendant company and to its shareholders.

Denies any knowledge or information sufficient to form a belief, and denies that it has any belief, as to whether said Ike E. O. Pace conveyed any land to the Madison River Power Company; and denies any knowledge or information sufficient to form a belief, and denies that it has any belief, as to whether the persons charged in said complaint, or any of said persons, have charge or control over the said Madison River Power Company or not.

14. Denies that in pursuance of said fraudulent scheme, or any fraudulent scheme, the persons alleged in said bill of complaint to have conspired and confederated together, or any of said persons, or any persons whomsoever, caused, on or about September,

47 1908, or at any other time, or at all, except as hereinafter alleged, property of this defendant, in the counties of Madison and Jefferson, to be conveyed to Henry F. Kroyer; denies that said property was sold without consideration or payment therefor; denies any knowledge or information sufficient to form a belief, and denies that it has any belief, as to whether or not the said property was subsequently sold to the Madison River Power Company, a corporation; denies any knowledge or information sufficient to form a belief, and denies that it has any belief, as to whether or not the Madison River Power Company is owned or controlled or managed by the persons alleged in said bill of complaint to have conspired against this defendant; denies that by said sale the assets of this defendant, or any part thereof, were depleted in any manner, or at all.

And further answering so much of said bill of complaint as is contained in paragraph 14 and the charges therein made, this defendant alleges that subsequent to the abandonment of the Gaylord smelter site, as hereinbefore set forth, this defendant continued

to own and possess certain tracts and parcels of land in the counties of Jefferson and Madison, in the State of Montana, and also owned and possessed certain water rights, ditches, canals, flumes and other appurtenances in connection therewith. That defendant had paid taxes upon the same for many years; that said property yielded practically no revenue or return to this defendant; that defendant had offered the same from time to time for sale, but had been unable to sell the same at a price satisfactory to this defendant. That on or about the 25th day of July, A. D. 1908, this defendant made and entered into a contract with Henry F. Kroyer by which, for a consideration of \$100,000.00, this defendant undertook to and

48 did convey to the said Henry F. Kroyer, the following described property:

The Parrot Quarry, Survey No. 5397, T. 2 N., R. 6 W.;

The Protection quartz lode mining claim, Survey No. 5396, T. 2 N., R. 6 W.;

The north half of Section 7, T. 1 N., R. 3 W.;

Lots numbered 1, 2, 3 and 4, in Section 6, T. 1 S., R. 4 W., less 20 acres in river;

The east half, and the southwest quarter of Section 29, T. 1 N., R. 4 W.; Lots 3 and 4; the northeast quarter of the southwest quarter; the southeast quarter of the southwest quarter, and the southeast quarter, of Section 31, T. 1 N., R. 4 W.;

The west half of the southwest quarter; the west half of the northwest quarter; the northeast quarter of the southwest quarter; the east half of the northwest quarter; and the northwest quarter of the northeast quarter, less 40 acres in river, of Section 32, T. 1 N., R. 4 W.;

Together with all houses, buildings, machinery, fixtures, and all personal property of every kind or description situated upon or used in connection with any of the foregoing property;

Also, eight and one-half shares ($8\frac{1}{2}$) of the capital stock of the Fish Creek Land & Ditch Company.

Also, all of the following described property, situated in Madison County, State of Montana, to wit:

The south half of Section 7, T. 1 N., R. 3 W.;

All of Section 28, T. 1 N., R. 4 W.;

All of Section 21, T. 1 N., R. 4 W.;

The northwest quarter; the southeast quarter; the southeast quarter of the southwest quarter; the south half of the northeast quarter, of Section 22, T. 1 N., R. 4 W.;

49 The east half of the northeast quarter, and the southwest quarter of the northeast quarter, of Section 32, T. 1 N., R. 4 W.;

The southeast quarter of the northeast quarter; the southwest quarter, and the southeast quarter of Section 14, R. 1 N., R. 4 W.;

The west half of Section 27, T. 1 N., R. 4 W.; and

The northwest quarter of Section 33, T. 1 N., R. 4 W.;

Together with all houses, buildings, machinery, fixtures, and other personal property, of every kind or character, situated upon or used in connection with any of the foregoing property.

In Jefferson County, Montana.

Also, all waters, water-rights, ditches, flumes and canals, of every kind and character, owned by the defendant, in either Jefferson or Madison counties, State of Montana.

Defendant further alleges that the said price of One Hundred Thousand Dollars, paid by the said Henry F. Kroyer for the said property, constituted a full and adequate consideration therefor; that said transaction was entirely free from any fraud on the part of this defendant, or any other persons whomsoever, and that the result thereof was of benefit to this defendant and to its shareholders, including the complainants in the above entitled action.

15. Defendant denies that in pursuance of said fraudulent scheme, or of any fraudulent scheme, the persons alleged in said complaint to have confederated and conspired together, or any of said persons, or any persons whomsoever, or at all, caused this de-

50 defendant, or that this defendant did, convey from the assets of this defendant company, about the year 1900, or at any other time, or at all, directly or indirectly, to the defendant corporation Anaconda Copper Mining Company, valuable or other lode mining claims and mining properties, of large or any extent, or having large or any bodies of ore, without valuable consideration therefor; and alleges that all transfers made by this defendant to the said Anaconda Copper Mining Company, or to any other corporation or person whomsoever, were made for full, fair and adequate consideration. Defendant denies that any transfers which this defendant ever made of any mining claims were without notice to stockholders, or without payment or account therefor. Denies that no account has been kept of any transactions which this defendant has ever carried out; and alleges on the contrary, that full and complete records have been kept of all transactions of this defendant. Denies that any conveyances or transfers have been withheld or concealed by the said persons mentioned in said complaint, or by any other persons whomsoever, or at all.

Denies that this defendant ever conveyed the southwest quarter of the southeast quarter of section 10, Township 3 North, Range 7 West, or the northeast quarter of the southeast quarter, or a lot known as the southeast quarter of the southeast quarter, or a lot known as the northwest quarter of the southeast quarter of section 24, Township 3 North, Range 7 West, in Silver Bow County, Montana, to the defendant Anaconda Copper Mining Company, or to any other persons whomsoever, or at all. Denies that this defendant ever conveyed to Kentucky lode, lot No. 136, or any interest therein, or the lode mining claims known as the Hall, Greatwestern, Millside or Narrow Gauge lode claims, or any of said claims, to the
51 defendant Anaconda Copper Mining Company, or to any other persons whomsoever, or at all. Defendant denies that it has ever owned or possessed any interest in the property described in said paragraph 15 of complainant's bill of complaint, or that it ever conveyed the same, or any part thereof, or any interest in any of said property, to any persons whomsoever, or at all.

16. Denies that in pursuance of said fraudulent scheme or of any

fraudulent scheme, or otherwise, the said persons alleged in said bill of complaint to have confederated and conspired, as aforesaid, or any of said persons, or any persons whomsoever, or at all, with or without knowledge that large or any bodies of ore existed in the mining claims of the defendant corporation Parrot Silver & Copper Company, or that the same could be extracted or sold at a profit, or otherwise, or that various shafts known as the Little Mina, Bellona, Parrot, or any of said shafts, would aid in mining the same, or that such shafts, or any of them were a practical necessity therefor, closed said shafts, or any of said shafts, at gross, wilful or other expense; denies that the defendant, or any persons whomsoever, or at all, ever wrongfully, carelessly, negligently, or otherwise, or at all, so managed or directed the workings or mining of the said defendant company as to wilfully, intentionally, fraudulently or otherwise, or at all, cause the said mining operations to be done at a loss, or the development thereof to be made solely, or at all, for the benefit of the Anaconda Copper Mining Company, or any other person or corporation; or that the properties of this defendant company were ever wilfully or intentionally changed from a profit bearing to a depreciated and losing result to this defendant corporation, or that the assets of the defendant corporation were greatly

52 diminished in the sum of \$5,000,000.00, or otherwise, or in any sum whatsoever, or at all.

And further answering so much of said bill of complaint as is contained in said paragraph 16, defendant alleges that it and the officers and agents of this defendant company, and the persons in control of its operations, have at all times exercised the utmost good faith, and its and their best judgment and endeavor to so conduct the affairs of this defendant, and particularly its mining operations, as to result in this defendant company obtaining therefrom the greatest possible benefit, advantage and profit.

Defendant alleges that such mining operations have been in fact so carried on, and that wherever any workings or shafts were closed down or operations thereat suspended, the reason for so doing was that either such properties could no longer be operated at a profit, or said workings had become unnecessary and useless in carrying on the operations of the company.

17. Defendant denies that in pursuance of said fraudulent scheme, or of any fraudulent scheme, or at all, the said persons charged in said bill of complaint with having confederated and conspired against this defendant, or any of said persons, or any persons whomsoever, or at all, allowed no accounts to be made or kept of this defendant whereby the amount of ore mined, smelted or refined, or the value thereof, could be ascertained by an examination thereof. And defendant denies that said persons, or any of said persons, or any persons whomsoever, ever kept an account for their own inspection, and denies that said accounts are concealed wilfully, or otherwise, by said persons, or any of said persons, or by any other persons whomsoever, from the minority stockholders of the said corporation,

53 and from the said complainants.

Defendant alleges the fact to be that it has at all times kept

and maintained a true, proper and complete system of accounting whereby there can be ascertained the amount of ore mined and smelted, and the metals refined, together with the value thereof, and also each and every other detail of defendant's business; and defendant alleges that heretofore and prior to the commencement of this action, this defendant exposed and showed to the above named plaintiffs, and particularly to the above named plaintiff William E. Wall, its books of account and records, and offered to and did assist the said William E. Wall to make such inspection and examination as said plaintiff desired; and defendant further alleges that said William E. Wall is, or should be, in full possession and information of the facts disclosed by the said books of account and records of this defendant company.

18. Answering so much of plaintiff's complaint as is continued in paragraph 18 thereof, this defendant admits that by the Montana Revised Codes, 1907, Sections 4408, et seq., a law passed in 1899 provided that mining corporations in the State of Montana may convey the assets of such corporation in exchange for stock of another mining company, if authorized by a two-thirds vote of the stockholders thereof. And that a dissenting stockholder may have the value of his stock appraised in the state court by appraisers appointed by said court.

Defendant denies that said persons alleged in said bill of complaint to have conspired against this defendant, or any of said persons, or any persons whomsoever, or at all, except as hereinafter set forth, caused a stockholders' meeting, held on April 30, 1910, to authorize a conveyance of the assets and property of the defendant corporation to the Anaconda Copper Mining Company in exchange for the stock of the said defendant Anaconda Copper Mining Company, at a rate of exchange established by said persons, in pursuance of said fraudulent scheme, or any fraudulent scheme. Denies that the said persons, or any persons whomsoever, accepted, or caused the defendant corporation to accept, said stock in wilful or other disregard of the rights of the minority stockholders of the said defendant Parrot Silver & Copper Company, or otherwise than as hereinafter stated.

19. Defendant denies that in pursuance of any fraudulent scheme, the said persons, or any of said persons, or any persons whomsoever, caused a conveyance to be made of all or any part of the assets or property of the defendant corporation to the defendant Anaconda Copper Mining Company, or to cause any conveyance to be made, save and except as is hereinafter set forth.

And further answering so much of said bill of complaint as is contained in paragraphs 18 and 19 thereof, this defendant alleges that by a resolution duly adopted by the Board of Directors of this defendant on the 9th day of February, 1910, it was decided to call a special meeting of the stockholders of this defendant to meet on the 30th day of April, A. D. 1910, at the principal office of this defendant, in the Hennessy Building, Butte, Montana, at 11 o'clock, A. M., for the purpose of considering a proposition to sell, transfer and exchange all of the property and assets owned or possessed by

this defendant, of every kind and character, to the Anaconda Copper Mining Company; that thereafter such proper corporate proceedings were had by this defendant and its officers and agents as resulted in the giving of more than thirty days notice of the time and place of holding said meeting to each and all of the stockholders of this defendant company, and in publishing the said notice of said meeting in a newspaper published in the City of Butte, County of Silver Bow, State of Montana, for a similar period. That at the time and place mentioned in said notice and fixed by said resolution of the Board of Directors, there appeared in person or by proxy, shareholders representing 170,957 shares of the capital stock of this defendant, out of a total authorized issue of 230,000 shares. That thereafter such proper corporate proceedings were had as resulted in a vote of 167,382 shares in the affirmative, as against 3,575 shares in the negative, in the adoption of a resolution duly authorizing, empowering and directing the officers of the defendant to take such proper proceedings as would cause a transfer and sale of all of the property and assets owned or possessed by this defendant, of every kind and character, to the Anaconda Copper Mining Company, in consideration of the Anaconda Copper Mining Company issuing to this defendant 90,000 shares of the capital stock of the said Anaconda Copper Mining Company, and assuming all debts and liabilities, of every kind and character, which had accrued by reason of any transaction of this defendant company, up to the date of transfer and conveyance; that thereafter the said resolution, so adopted by the said stockholders at the said meeting, was duly and regularly adopted, approved and ratified by the Board of Directors of this defendant company at a special meeting thereof, held at the office of the Company, at 42 Broadway, in the City of New York, on Tuesday, the 10th day of May, A. D. 1910, at 11 o'clock, A. M., and such proper corporate action was taken by resolution as authorized, empowered and directed the officers of this defendant corporation to make, execute, acknowledge and deliver on its behalf a contract of sale, in accordance with the foregoing, with the Anaconda Copper Mining Company. That thereafter, to wit, on the 31st day of May, A. D. 1910, a deed of conveyance was duly made, executed, acknowledged and delivered by this defendant corporation, through its proper officers, conveying and selling to the defendant Anaconda Copper Mining Company, all of the property and assets of every kind and character, owned or possessed by this defendant, in consideration of and the payment by the said Anaconda Copper Mining Company to this defendant, of 90,000 shares of the capital stock of the said Anaconda Copper Mining Company, and the assumption by the said Anaconda Copper Mining Company of all of said debts and liabilities; and this defendant further alleges that it duly received, and now holds in its treasury, for the benefit of the shareholders of this corporation, 90,000 shares of the said capital stock of the said Anaconda Copper Mining Company.

Defendant further alleges that the said transaction by which this defendant sold and conveyed to the said Anaconda Copper Mining

Company all of its property and assets, of every kind and character, and received as a consideration and in payment therefor, the said 90,000 shares of the capital stock of the Anaconda Copper Mining Company, was in all respects, so far as this defendant and its shareholders are concerned, a fair, equitable and advantageous contract and transaction.

57 Defendant alleges that prior to the aforesaid sale and conveyance of its properties, and the receipt of the said Anaconda Copper Mining Company's stock, this defendant was utterly unable to conduct its mining operations at a profit; that by reason of depleted ore bodies, the low prices prevailing for copper and silver metals, the depth to which the mines of this defendant had been sunk, the remoteness of the ore bodies from the principal workings of the defendant, this defendant was unable to conduct mining operations at a profit, and that notwithstanding every economy was practiced in the conduct and management of the affairs of this defendant for a long time prior to the said sale and transfer of its properties, this defendant had shown a constant loss from its operations. That immediately after said sale and conveyance this defendant was placed in a position where it was relieved from practically all expense and charges against it, and that it has received from the Anaconda Copper Mining Company dividends upon the stock held by it, up to April 19, 1911, amounting to the sum of \$180,000.00; and that defendant is informed and believes that an additional dividend on said stock has been declared from which this defendant will receive the sum of \$45,000.00 upon the 19th day of July 1911.

Defendant further alleges that it is informed and believes that it will continue to receive from the said Anaconda Copper Mining Company in the future, at least as great a regular income as it has received since its acquisition of said Anaconda stock. Defendant alleges that the said transaction, of which the said complainants most unjustly complain, was directly for the benefit and advantage of this defendant company and its minority shareholders including
58 the said plaintiffs.

20. Answering so much of said bill of complaint as is contained in paragraph 20 thereof, this defendant denies that it has any knowledge or information sufficient to form a belief, and denies that it has any belief, as to the belief of the plaintiffs, or either of said plaintiffs, in regard to the constitutionality or unconstitutionality of the said state statutes above referred to, or as to whether said complainants believe the said statute is unconstitutional and void because contrary to the provisions of Section 10, Article 1, of the constitution of the United States, or to the provisions of Article 5 in Amendment of the constitution of the United States, or for any other reason, or at all; denies that the said exchange impairs the obligation of the contract which the plaintiffs, as shareholders of said corporation, entered into, or of any other contract; and alleges that the said statute has been held to be constitutional by the Supreme Court of the State of Montana in the case of Allen v. Ajax Mining Company reported in 30 Montana Reports, at page 501.

21. Defendant denies that an inspection and appraisal of the

property which was owned by the defendant, and which this defendant conveyed to the defendant Anaconda Copper Mining Company, would fail to disclose the true or real value of all of the assets of this corporation. Denies that there has been any depletion of assets of this corporation, save and except through the ordinary working of the mines and business operations of this defendant company; and defendant further alleges, in answer to so much of said plaintiffs' complaint as is contained in paragraph 21 thereof, that under and by virtue of the provisions of the statutes of the State of Montana, above referred to, the said plaintiffs have, and each
59 of said plaintiffs had, a full, complete and adequate remedy in the premises.

Defendant denies that the persons charged in said bill of complaint with having conspired or confederated against this defendant, or any of said persons, or that the defendant itself, at any time or in any way, sought or endeavored to procure the above named complainants, or either of said complainants from taking advantage of the said statutes of the State of Montana, providing for an appraisal of the stock of the said plaintiffs, owned in this defendant company, or that any of said persons, or this defendant, ever at any time, sought or endeavored to procure the said plaintiffs, or either of said plaintiffs, to institute proceedings under said statutes, or any of said statutes; but defendant alleges that acting freely and voluntarily, and of their own volition, the said plaintiffs herein, and each of said plaintiffs, on the 26th day of May, 1910, filed a certain proceeding in the District Court of the Second Judicial District of the State of Montana, in and for the County of Silver Bow, under and in accordance with the terms of said statutes, by which the said complainants, and each of them, sought in said proceedings to have an appraisal made of the stock of said complainants, and of each of said complainants in this defendant, owned by them. Defendant further alleges that from time to time it endeavored to have the said matters involved in said proceedings heard and determined, but that the said complainants, and each of them, wilfully delayed said proceedings, and finally caused the same to be dismissed without having attempted to secure any relief or redress therein for any alleged
wrong or injury suffered, or alleged to have been suffered,
60 by the said complainants, or either of them; defendant further alleges that at the time the above entitled suit was filed in the above entitled court, the said proceedings were still pending in the above named state court in the State of Montana.

22. This defendant admits that the plaintiff Wall requested of the defendant the right to examine the books of the defendant corporation. Defendant denies that there was any delay in showing the said plaintiff the said books; defendant denies that no books of account, in true and accurate form, existed or exists, and denies that said plaintiff was informed by said officers that said plaintiff could see no other books or accounts whereby any true accounts of the assets of said Parrot Silver & Copper Company could be obtained; on the contrary, this defendant alleges that it endeavored to, and did, furnish to the above named plaintiffs, and particularly to the plain-

tiff William E. Wall, full and complete access to all records of account and books showing the transactions of this defendant; but defendant alleges that the said examination made by the said Wall was not in good faith, or for the purpose of ascertaining the true condition of the affairs of this defendant corporation, but that on the contrary, the examination by the plaintiff Wall was a mere pretext, in order that said plaintiff might, by threatening to bring suit against the defendant corporation and its officers and agents, force the said defendant and its officers and agents, to purchase from the said plaintiff his stock at a price greatly in excess of its true and reasonable value.

23. Answering so much of the bill of complaint as is contained in paragraph 24 thereof, this defendant denies that there has been a depreciation in the value of this defendant's property by
61 virtue of any fraudulent or other scheme or conspiracy, or at all, or by the persons alleged in said bill of complaint to have conspired against this defendant, or any of said persons, or any persons whomsoever, or otherwise, or at all, in the sum of \$50,000,000. or any other sum whatsoever, or at all save as heretofore stated, that said mines and ore bodies have been depleted by conservative and economical mining operations.

Defendant denies that it has any knowledge or information sufficient to form a belief, and denies that it has any belief, as to whether or not ore can be continuously mined for a term of fifty years hereafter from the said mines formerly owned by this defendant. Defendant admits that ore can be continuously mined for some period of time, although defendant alleges that such ore could not be profitably mined by this defendant at the prevailing prices for metal products.

Defendant denies that any dumps or tailings from said mines which the defendant owned are worth the sum of \$5,000,000.00, but alleges that some tailings — dumps which defendant did own and which were conveyed to the defendant Anaconda Copper Mining Company, may have some value, the exact amount of which is unknown to this defendant; that such value depends entirely upon the quantities of, and prices which may be obtained for, the metal contents thereof, and the cost of working and extracting said products.

24. Defendant denies that any conveyances whatsoever were caused to be made by the persons charged in said bill of complaint as having entered into a conspiracy to defraud this defendant and the said plaintiffs, or by any of said persons, or any persons whomsoever; and denies that any conveyances which it ever made were in
62 fraud of this defendant, or were made for the purpose of diminishing or depleting the assets of this defendant; but on the contrary, the defendant alleges that for each and every conveyance made by it since the year 1899, full, adequate and complete consideration has been paid by those to whom in each instance said conveyances were made.

25. Answering so much of plaintiffs' complaint as is contained in paragraph 26 thereof, this defendant denies that the minority stockholders, or the plaintiffs, or either of said plaintiffs, have ever re-

peatedly, or at any time, protested or objected to the management or direction of the mining properties of the defendant. Denies that any protests have been rendered useless by reason of the control of the said persons, or any of said persons, or any persons whomsoever, or that any protests have in fact been made; and denies further that there has been any purpose to carry out any fraudulent scheme, or to obtain any assets from this company.

26. Answering so much of said bill of complaint as is contained in paragraph 27 thereof, this defendant denies that the transfer of the stock of the said defendant corporation Anaconda Copper Mining Company, in exchange for the conveyance of the assets of this defendant, was arranged upon the basis of \$2,300,000.00, the value of the capital stock at par, for 90,000 shares of the defendant corporation Anaconda Copper Mining Company; but on the contrary, alleges that at the time that the said contract of sale was entered into, the shares of stock of the Anaconda Copper Mining Company were selling upon the market for approximately \$50.00 per share, and that said sale was based upon the value of said 90,000 shares of Anaconda stock, and the assumption of all of the debts and
63 liabilities of this defendant, and that said sale was fairly and equitably arranged upon the basis of the value, location and prospects of all of the property of this defendant as near as the same could be ascertained.

27. Answering so much of said complaint as is contained in paragraph 28 of said bill of complaint, this defendant denies that the said persons, or any of said persons, or any persons whomsoever, in pursuance of any fraudulent scheme, or otherwise, intended to allow or did allow, in said transfer, for the value only of the quick assets of the mines of the defendant corporation, irrespective of the value of the large or any bodies of ore, or of dumpings and tailings, or of properties sold and conveyed as above specified; but alleges on the contrary, that the said basis of sale and transfer was arranged upon the full and fair value, as aforesaid, of all of the assets of this defendant, including the prospective value of its mines and mining claims, insofar as the same could be determined.

28. Denies that said conveyance and transfer of any of the assets of the defendant company was in pursuance of or the result of any fraudulent scheme or conspiracy on the part of the persons named in said complaint as having conspired and confederated together, or any of said persons, or of any persons whomsoever, or at all, or for the purpose of preventing an accounting for the ores or properties taken by the defendant corporation Anaconda Copper Mining Company, or for the depletion and diminution as stated in said complaint, of the assets of this defendant; but alleges that the said transaction and every element thereof, in each and every
64 respect, was fairly and equitably conducted, and that the defendant sought to and did obtain, in payment for its property and assets a full, fair and adequate price therefor. Denies that the defendant's assets have been depleted to the extent of \$100,000,000.00, or any other sum, and denies that the total value of defendant's properties amounted to \$200,000,000 and alleges that the

said purchase price of 90,000 shares of Anaconda stock, and the assumption of said debts and liabilities, was an adequate price and valuation for all of said properties and assets.

29. Denies that if the said conveyance from this defendant to the defendant Anaconda Copper Mining Company is confirmed and allowed, the plaintiffs, or either of said plaintiffs, will be deprived of any right in or to the assets as a shareholder of this defendant. Denies that said conveyance is fraudulent and void; denies that by any appraisal under the statute of the State of Montana the plaintiffs, or either of said plaintiffs, will be unjustly deprived of their rights as shareholders in this defendant without due process of law, or otherwise; denies that the said conveyance is a fraud on the rights of plaintiffs, or either of said plaintiffs, as shareholders; denies that plaintiffs, or either of said plaintiffs, have persistently or at all applied to the officers of the said defendant company to make true statements and accounts or to restore the assets to their true or real value, and denies that there has been any refusal so to do.

30. Denies that the defendant Anaconda Copper Mining Company, without regard to the rights of the plaintiffs, as alleged in said bill of complaint, or at all, performed, suffered or committed any act for the preparation or the commission of any fraudulent

65 act on the said defendant; denies that the defendant Anaconda Copper Mining Company, in connection with the United Metals Selling Company, the Raritan Copper Company or any other corporation whatsoever, or at all, ever sought to or does control the production, transfer or sale of copper among the states or with foreign countries; denies that this defendant or the said defendant Anaconda Copper Mining Company, has any intention or purpose of regulating the sale, price or transmission of copper with the states or foreign nations; denies that the defendant Anaconda Copper Mining Company ever contracted to or did purchase the capital stock of the defendant company; and denies that any contract or combination between this defendant and the defendant Anaconda Copper Mining Company, or any other persons whomsoever, so far as this defendant is or was concerned, were contrary to the provisions of any part of the Act of the United States of July 2, 1890.

31. Denies that the defendant Anaconda Copper Mining Company, by virtue of the mining, sale or transmission of copper, and particularly of the copper mined within the State of Montana, or otherwise, or at all, or the sale and transportation thereof, to other states or foreign countries, did, on or about the 30th day of April, 1910, or at any other time, or at all, attempt to monopolize the production, sale, transfer or price of copper, either by contract or purchase of the assets of this defendant, or in any other manner, or at all; denies that this defendant or the said Anaconda Copper Mining Company, ever intended to, attempted to or did, suppress competition in the copper trade, or at all. Denies that this defendant and said Anaconda Copper Mining Company, or any other
66 corporations or persons whomsoever, ever did combine or conspire with the Anaconda Copper Mining Company, or at

tempt to monopolize a certain or any part of the trade or commerce among the several states or with foreign countries, or otherwise or at all, and particularly denies that this defendant or the Anaconda Copper Mining Company ever did, or that they or either of them, ever attempted to monopolize the trade in copper, or particularly the distinctive copper mined in the State of Montana, contrary to the provisions of the Act of the United States of July 2, 1890, or otherwise, or at all.

Denies that any of the copper produced from the said Butte District, or elsewhere in the State of Montana, is distinctive from that elsewhere mined, or as an article of commerce or otherwise, is requisite or used to furnish tensile strength to copper mined in other districts.

Defendant further, except as hereinbefore specifically admitted or denied, denies each and every allegation contained in said complainants' bill of complaint.

67 And, by way of further answer, and as a separate defense to the matters alleged in said bill of complaint by the above named complainants, this defendant alleges that the above named complainant William E. Wall has been a stockholder of this defendant company since on or about November 14, 1902; that many of the transactions which are set forth in said bill of complaint, as affirmatively appears therefrom, occurred prior to said date, and before the said complainant became a stockholder or interested in this defendant company; that the said complainant's predecessors in interest, as stockholders of this defendant company, had, at all times, full and complete knowledge and information of all of said transactions, and participated as such stockholders in proceedings, either authorizing or ratifying said transactions, and each of said transactions.

Defendant further alleges that as to all of the said transactions which occurred subsequent to the said date when said complainant Wall became a shareholder of this defendant, the said complainant had full and complete knowledge of all of the business transactions of this defendant, including all of the transactions set forth in said bill of complaint, occurring subsequent to said date, and that the said complainant had full and complete access to all of the books and files of this defendant, wherein were recorded full, true and complete records of all of said transactions and proceedings.

This defendant alleges that at no time prior to April 30, 1910, did the said complainant ever protest or object to any of the proceedings or transactions of this defendant company, but that on the contrary,

62 the said complainant, with full knowledge, as aforesaid, of all of the transactions of said defendant, occurring subsequent to the time when the said complainant became a stockholder of this defendant, acquiesced in and consented to the same; that by reason of the foregoing, the said complainant has been guilty of laches and should not now be heard to question or complain of any of the transactions set forth in said bill of complaint, occurring prior to the said 30th day of April, A. D. 1910.

Defendant further alleges that the above named complainant

Louis Foss has been a stockholder of the defendant company since August, 1907; that many of the transactions of which said complainant complains in said bill of complaint occurred, as shown hereby, prior to said date, and before said complainant was a shareholder of the defendant company; that complainant's predecessors in interest, as shareholders of said defendant company, had full knowledge and information of all of said transactions and participated in proceeding therefor authorizing or ratifying said transactions, and each of said transactions.

Defendant further alleges that since the said complainant Foss became a shareholder of this defendant company, the said complainant had full and complete knowledge of all of the business transactions of this defendant, including all of the transactions set forth in said bill of complaint, occurring subsequent to said date, and that the said complainant had full and complete access to all of the books and files of this defendant, wherein were recorded full, true and complete records of all of said transactions and proceedings.

This defendant alleges that at no time prior to April 30, 1910, did the said complainant ever protest or object to any of the proceedings or transactions of this defendant company, but that
69 on the contrary, the said complainant, with full knowledge, as aforesaid, of all of the transactions of said defendant, occurring subsequent to the time when the said complainant became a stockholder of this defendant, acquiesced in and consented to the same; that by reason of the foregoing, the said complainant has been guilty of laches and should not now be heard to question or complain of any of the transactions set forth in said bill of complaint, occurring prior to the said 30th day of April, A. D. 1910.

Wherefore, this defendant, having fully answered, confessed, traversed, avoided or denied all the matters in said bill of complaint material to be answered according to its best knowledge and belief, humbly prays this Honorable Court to enter its judgment that this defendant be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained; and for such further and other relief in the premises as to this Honorable Court may seem meet and in accordance with equity.

PARROT SILVER AND COPPER CO.,

By H. A. GALLWAY,

Director and General Manager of defendant

Parrot Silver & Copper Company.

Attest:

D. GAY STIVERS,

Its Assistant Secretary.

L. O. EVANS,

W. B. RODGERS,

D. GAY STIVERS and

C. F. KELLEY,

616 Hennessey Building, Butte, Montana,

Solicitors and of Counsel for defendant

Parrot Silver & Copper Company.

Service of the foregoing acknowledged and a true copy received
this 3rd day of July, 1911.

J. W. FREEMAN,
Atty. for Complainants.

Filed July 3, 1911, Geo. W. Sproule, Clerk.

70 Thereafter, on July 3, 1911, the Answer of defendant Anaconda Copper Mining Company was duly filed therein, in the words and figures to wit:

71 In the Circuit Court of the United States, Ninth Circuit,
District of Montana.

No. 464. In Equity.

WILLIAM E. WALL and LOUIS FOSS, Complainants,
versus

ANACONDA COPPER MINING COMPANY, a Corporation of Montana,
and Parrot Silver & Copper Company, a Corporation of Montana,
Defendants.

Answer of Defendant Anaconda Copper Mining Company.

This defendant, reserving all manner of exceptions that may be had to the uncertainties and imperfections of the bill, comes and answers thereto, or to so much thereof as it is advised is material to be answered, and says:

1. As to so much of said bill of complaint as is contained in paragraph 1 thereof, this defendant denies any knowledge or information sufficient to form a belief, and denies that it has any belief, as to any of the allegations thereof, save and except that this defendant admits that the Parrot Silver & Copper Company is a corporation, and that this defendant is a corporation.

72 2. As to so much of said bill of complaint as is contained
in paragraph 2 thereof, this defendant denies any knowledge
or information sufficient to form a belief, and denies that it has any
belief, as to any of the allegations thereof, and requires strict proof
to be made thereof.

3. As to so much of said bill of complaint as is contained in paragraph 3 thereof, this defendant denies any knowledge or information sufficient to form a belief, and denies that it has any belief as to any of the allegations thereof, save and except that this defendant denies that the persons mentioned in said bill of complaint, or any of said persons, or any persons whomsoever, or at all, ever entered into any conspiracy or confederation or scheme by which any of the assets of the said Parrot Silver & Copper Company were to be conveyed to this defendant corporation; and this defendant denies that it ever entered into any such scheme, combination or conspiracy.

4. Answering so much of said bill of complaint as is set forth in

paragraph 4 thereof, this defendant denies that in pursuance of any conspiracy or fraudulent scheme, or otherwise or at all, the said persons charged in said bill of complaint with having so done, or any of said persons, or any persons whomsoever, ever directed the affairs of the defendant Parrot Silver & Copper Company or dictated its policy so as to keep its said stockholders in ignorance of the financial condition, and the diminution and depletion of its assets until a transfer of all of the assets of the defendant Parrot Silver & Copper Company could be made to this defendant company, or otherwise or at all.

73 5. Answering so much of said bill of complaint as is contained in paragraph 5 thereof, this defendant denies any knowledge or information sufficient to form a belief, and denies that it has any belief, as to any of said allegations contained in said paragraph, except that this defendant admits that the Parrot Silver & Copper Company was incorporated under the laws of the Territory of Montana, in 1880, and that its charter was renewed in 1897; admits that certain of its mines were situated in about the middle of the mining district of Butte, in said State of Montana; admits that some of the adjacent mines were of large value, and admits that some of the adjacent mines are owned and controlled by this defendant.

6. Answering so much of the allegations of said bill of complaint as are contained in paragraph 6 thereof, this defendant denies that it has any knowledge or information sufficient to form a belief, and denies that it has any belief thereof, and requires strict proof to be made of the same, save and except this defendant denies specifically the existence at any time, or between any persons whomsoever, or any fraudulent scheme or conspiracy, by which the whole or any part of the assets of the said defendant Parrot Silver & Copper Company were to be transferred to this defendant.

7. This defendant denies that in pursuance of any fraudulent scheme or conspiracy on its part, or on the part of the persons alleged in said bill of complaint to have so conspired, or any other persons whomsoever, or in furtherance of any fraudulent scheme or conspiracy, by any persons whomsoever, the machinery of
74 the smelting plant of the defendant Parrot Silver & Copper Company was removed from Butte or place in the reduction works of this defendant; but defendant admits that certain machinery was sold, as hereinafter set forth, by the said defendant Parrot Silver & Copper Company to this defendant. Defendant denies that the reduction works of this defendant were under the control of the said persons, or any of said persons; denies that by virtue of any contract for smelting the ores of the Parrot Silver & Copper Company, the said company suffered any loss, or that the smelting returns of this defendant were kept under the control of said persons, or any of said persons; denies that no true or accurate returns of said smelting operations were ever made by this defendant to the directors of the Parrot Silver & Copper Company, and denies that the true returns of said smelting operations were kept and concealed by said persons mentioned in said bill of complaint, or any of said persons, in pursuance of any fraudulent scheme, as therein charged.

8. Defendant denies that the assets of the Parrot Silver & Copper Company were diminished by the value of its said smelter, which is charged in said complaint to have been of the value of seven hundred thousand dollars; and denies that by abandoning said smelter and discontinuing operations thereat, the assets of said Parrot Silver & Copper Company were diminished in the said sum, or any other sum, or at all; on the contrary, this defendant alleges that the defendant Parrot Silver & Copper Company had been for a long time the owner of a certain smelting plant located in the vicinity of Butte, County of Silver Bow, State of Montana; that said plant had been in existence for many years, and was on or about the
75 month of October, 1899, in a dilapidated, greatly depreciated and worn out condition; that defendant is informed and believes that owing to the advancement which had been made in metallurgical processes, involved in the smelting and reducing of ores similar to those produced by the Parrot Silver & Copper Company, the said plant was no longer suitable for carrying out the purposes for which the said plant had originally been designed, and for which it was originally built, to wit, the smelting and reduction of the ores produced by the said Parrot Silver & Copper Company.

9. Defendant further alleges that about the year 1901 the Washoe Copper Company, a corporation organized under the laws of the State of Montana, had built and fully equipped a modern and complete copper smelting plant in the vicinity of the town of Anaconda, County of Deer Lodge, State of Montana; that said Washoe Copper Company had leased its said smelting plant to this defendant company, and this defendant was conducting smelting operations thereat; that on or about the — day of August, A. D. 1899, a contract was entered into between the Parrott Silver & Copper Company and this defendant for the treatment of all of the ore produced by the said Parrot Silver & Copper Company, at the said smelting plant, operated as aforesaid by this defendant; that the terms of said contract, providing for the payments to be made to this defendant for the treatment of the ores of the said Parrot Silver & Copper Company at said smelting plant, were fair, equitable and reasonable, and this
76 defendant is informed and believes that it was to the mutual advantage and benefit of both the defendants hereto to enter into and carry out and perform said contract; that as a result of said contract, the defendant Parrot Silver & Copper Company was enabled to have its ores treated at the said smelting plant operated by this defendant, wherein, by reason of the modern and efficient means and processes furnished for so doing, the said defendant Parrot Silver & Copper Company was enabled to save large sums of money over and above the amount which it would have cost the said Parrot Silver & Copper Company to have continued reducing its said ores at its said smelting plant located in the vicinity of Butte.

Defendant further alleges that the said contract is and was in all of its terms and conditions essentially fair and equitable to both of the parties thereto. That this defendant, acting under said contract, and in accordance with the terms thereof, has at all times rendered to the defendant Parrot Silver & Copper Company, full

and complete statements showing the amount of ore received by it from the said Parrot Silver & Copper Company, the amount of metal contents contained in said ores, the cost of treating the same, and has accounted justly and fairly to the defendant Parrot Silver & Copper Company for all of such metal contents. That the charge contained in the said bill of complaint that by virtue of said contract, or by virtue of any of the acts of this defendant in carrying out or performing the said contract there resulted a loss or damage to the defendant Parrot Silver & Copper Company, is wholly untrue; and this defendant alleges on the contrary, that the action of the defendant Parrot Silver & Copper Company in entering into the smelting contract, as aforesaid, with this defendant company, resulted in saving to the said Parrot Silver & Copper Company, and ultimately to its shareholders, of large sums of money.

Defendant denies that in pursuance of said fraudulent scheme charged in said bill of complaint, or of any fraudulent scheme, or at all, the persons mentioned in said bill of complaint, or any of said persons, or any persons whomsoever, or at all, procured machinery of the value of \$750,000.00 to be obtained and paid for by the defendant Parrot Silver & Copper Company, about the year 1901, or at any other time or at all; denies that machinery of said value, or of any value, except as hereinafter stated, was by said persons, or any of said persons or any persons whomsoever, procured to be purchased and paid for and then delivered to this defendant company; denies that this defendant was under the control or direction of said persons charged in said bill of complaint, or any of said persons; denies that no payment was made by this defendant on account of the machinery delivered by the said Parrot Silver & Copper Company; and denies that by reason of any act of either the defendant Parrot Silver & Copper Company or this defendant, in connection with said matter, the assets of the defendant Parrot Silver & Copper Company were diminished in the sum of \$750,000.00, or any other sum, or at all.

Defendant further alleges that some machinery which was formerly used at the reduction plant of the Parrot Silver & Copper Company, and some machinery which had been purchased for installation at a plant which the said defendant Parrot Silver & Copper Company was erecting in the vicinity of Gaylord, Montana, and which had become wholly worthless to the defendant Parrot Silver & Copper Company, was sold by the defendant Parrot Silver & Copper Company to this defendant; that this defendant purchased the said machinery and paid a fair and satisfactory price, to wit, the sum of about \$71,000.00, in consideration for the same. This defendant denies that the Parrot Silver & Copper Company, or its shareholders, were damaged in the amount set forth in said complaint, or in any amount whatsoever, by reason of any of the aforesaid transactions.

Except as hereinbefore specifically admitted or denied, this defendant denies that it has any knowledge or information sufficient to form a belief, and denies that it has any belief, as to any of the allegations contained in paragraphs 8 and 9 of said bill of complaint.

10. Answering so much of said bill of complaint as is contained in paragraph 10 thereof, this defendant denies that said persons mentioned in said bill of complaint, or any of said persons, or any persons whomsoever, or at all, in pursuance of any fraudulent scheme, or otherwise or at all, ever caused large or any quantities of ores, of great or any value, to be taken from the property of the defendant Parrot Silver & Copper Company, through shafts or workings of this company; denies that any ores which were shipped to the smelter and reduction works of this defendant were shipped at great or any expense of freight, hauling or handling, save and except reasonable charges therefor; denies that said ores or
79 any ores belonging to the defendant Parrot Silver & Copper Company were reduced, smelted or treated by this defendant company at an expense greatly in excess of the cost of smelting said ores, or of what said cost would have been had said smelting plant or workings of the defendant Parrot Silver & Copper Company at Butte been maintained, or in excess of what was a proper or reasonable charge to have been made.

Denies that any ore ever shipped by the defendant Parrot Silver & Copper Company, or taken from the properties of said defendant, was never sampled or weighed in a true and accurate manner, and denies that no true or accurate account thereof was kept. Denies that the assets of the defendant Parrot Silver & Copper Company were diminished in any way, or that excessive charges or other charges, except such as were fair and reasonable, were made and denies that no payment has ever been made by this defendant for whatever ores were shipped by defendant Parrot Silver & Copper Company from its properties to this defendant. Denies that said defendant Parrot Silver & Copper Company has been damaged thereby in an amount in excess of \$5,000,000.00, or in any other sum, or at all, by reason of any of the acts alleged in said bill of complaint.

Further answering so much of said bill of complaint as is contained in paragraph 10 thereof, this defendant alleges that at no time, nor in any manner, did it ever take from the property of the Parrot Silver & Copper Company, or through any shaft or agency owned or controlled by it, or by any of the persons alleged in said bill of complaint to have done so, or by any persons or corporations other than the defendant Parrot Silver & Copper Company,
80 any valuable or other ore from the properties of the defendant Parrot Silver & Copper Company, but alleges that for all ores which the defendant Parrot Silver & Copper Company shipped or caused to be shipped to this defendant, full, true and accurate account was kept thereof; alleges that all of said ores were weighed in a true and accurate manner, and a true and accurate return of said ores kept, and that the charges made for treating said ores were reasonable, and that statements thereof have been made by this defendant to the defendant Parrot Silver & Copper Company, and to its officers and directors, and that they in turn have made statements to the shareholders of said Parrot Silver & Copper Company.

Except as hereinbefore specifically admitted or denied, this de-

fendant denies that it has any knowledge or information sufficient to form a belief, and denies that it has any belief, as to any of the allegations contained in paragraph 10 of said bill of complaint.

11. Defendant denies that it has any knowledge or information sufficient to form a belief, and denies that it has any belief, as to any of the allegations contained in paragraph 11 of said bill of complaint, except that this defendant denies any scheme or conspiracy on the part of any persons whomsoever, of which it had any knowledge, or to which it was a party, to do any of the acts alleged in said paragraph 11.

This defendant alleges that it was, and for a long time prior to the transactions mentioned in said bill of complaint had been, the owner of an undivided 5/36 interest in and to the Nipper quartz lode mining claim, which claim was adjacent to some of the
81 mining claims of said defendant Parrot Silver & Copper Company; that prior to the transfer alleged in paragraph 11 of said bill of complaint, the predecessors in interest of the Red Metal Mining Company, and this defendant and the Parrot Silver & Copper Company, were engaged in numerous controversies over the ownership of certain veins and ore bodies lying within and beneath the surface of the said Nipper quartz lode mining claim, and of the said quartz lode mining claims owned, as aforesaid, by the Parrot Silver & Copper Company, this defendant and the predecessors of the Red Metal Mining Company, and particularly over the ownership of the said "Blue Vein"; that numerous actions at law and suits in equity had been brought by the respective owners of the said mining claims for the purpose of determining said controversies, and for the recovery of damages each from the other, on account of alleged trespasses upon certain ore bodies which the said parties each claimed to own: that the title to said ore bodies, or rights of this defendant, or of the Parrot Silver & Copper Company, or of the said Red Metal Mining Company, or its predecessors in interest, in or to any of said veins or ore bodies, had not been decided by any court of last resort, as charged in said bill, or by any other court. On the contrary, none of said actions involving said ore bodies, to which the defendant Parrot Silver & Copper Company was a party, had been finally tried, nor had any judgment, finally determining the rights of the parties, been rendered in any of said suits or actions.

That on or about the 21st day of December, 1906, the Red Metal Mining Company became the owner of an undivided 31/36
82 interest in and to the Nipper quartz lode mining claim, and thereafter negotiations for a settlement and adjustment of the said controversies were begun, and by mutual consent and agreement, duly submitted to the shareholders of the defendant Parrot Silver & Copper Company, and this defendant, and authorized by them, and certain boundary lines and planes were established, fixing and defining the right of the respective parties to said litigation in and to the ore bodies and veins in question. That the said agreement was in all respects fair and equitable to all of the parties concerned, and resulted in fully protecting and reserving all of the rights of said parties in and to the said ore bodies and veins, and

relieved all of the parties thereto from the necessity of expending large sums of money in developing said veins and ore bodies in order to establish the respective rights of the parties thereto.

This defendant further alleges that it was to the mutual advantage of this defendant and the defendant Parrot Silver & Copper Company and of the Red Metal Mining Company to enter into said agreement settling and adjusting said controversy, and fixing and establishing the rights of the said respective parties in and to the veins and ore bodies in question, and that such action was taken by all of the parties thereto with a view of conserving the best interests of each of the parties thereto. Defendant denies that any part of the Blue Vein relinquished by the Parrot Silver & Copper Company to this defendant or the Red Metal Mining Company was capable of producing 1,000 tons of ore per day, and alleges on information and belief, that no portion of said vein conveyed to this defendant has ever produced any ore.

83 12. Defendant denies that it has any knowledge or information sufficient to form a belief, and denies that it has any belief, as to any of the allegations contained in paragraph 12 of said bill of complaint, except that this defendant denies any scheme or conspiracy on the part of any persons whomsoever, of which it had any knowledge, or to which it was a party, to do any of the acts alleged in said paragraph 12.

13. Defendant denies that it has any knowledge or information sufficient to form a belief, and denies that it has any belief, as to any of the allegations contained in paragraph 13 of said bill of complaint, except that this defendant denies any scheme or conspiracy on the part of any persons whomsoever, of which it had any knowledge, or to which it was a party, to do any of the acts alleged in said paragraph 13.

14. Defendant denies that it has any knowledge or information sufficient to form a belief, and denies that it has any belief, as to any of the allegations contained in paragraph 14 of said bill of complaint, except that this defendant denies any scheme or conspiracy on the part of any persons whomsoever, of which it had any knowledge, or to which it was a party, to do any of the acts alleged in said paragraph 14.

15. Answering so much of said bill of complaint as is contained in paragraph 15 thereof, this defendant denies that in pursuance of said fraudulent scheme, or of any fraudulent scheme, the persons alleged in said complaint to have confederated and conspired to-

gether, or any of said persons, or any persons whomsoever,

84 or at all, caused the defendant Parrot Silver & Copper Company to, or that said defendant did, convey from the assets

of said defendant, about the year 1900, or at any other time or at all, directly or indirectly, to this defendant, valuable or other lode mining claims and mining properties, of large or any extent, or having large or any bodies of ore, without valuable consideration being paid therefor; alleges that all transfers made to this defendant by the Parrot Silver & Copper Company were made for full, fair and adequate consideration. Defendant denies that any transfers were made to this defendant of any of the property described in said paragraph

15 of said bill of complaint, and denies that this defendant ever received title to any of said mining claims or property in any manner, directly or indirectly, through the said defendant Parrot Silver & Copper Company.

16. This defendant denies that in pursuance of the said fraudulent scheme, or of any fraudulent scheme, or otherwise, or at all, the persons alleged in said bill of complaint to have confederated and conspired, as aforesaid, or any of said persons, or any persons whomsoever, or at all, with or without knowledge that large or any bodies of ore existed in the workings of the defendant Parrot Silver & Copper Company, or that the same could be extracted or sold at a profit, or otherwise, or that various shafts known as the Little Mina, Bellona, Parrot, or any of said shafts, would aid in the mining of the same, or that such shafts, or any of them, were a practical or other necessity, closed said shafts, or any of said shafts, at gross, wilful or other expense, in the interest of this defendant; denies that the defendant

85 Parrot Silver & Copper Company, or any persons whomsoever, or at all, ever wrongfully, carelessly, negligently, or otherwise, or at all, so managed or directed the workings or mining of the said defendant Parrot Silver & Copper Company as to wilfully, intentionally, fraudulently or otherwise, or at all, cause the said mining operations to be done at a loss, or the development thereof to be made solely, or at all for the benefit of this defendant; denies that the properties of the said Parrot Silver & Copper Company were ever wilfully or intentionally changed from a profit bearing to a depreciated and losing result to the defendant Parrot Silver & Copper Company, or that the assets of the Parrot Silver & Copper Company were greatly diminished in the sum of \$5,000,000.00, or at all, in the interest of this defendant company.

17. Answering so much of the bill of complaint as is contained in paragraph 17 thereof, defendant denies that in pursuance of said fraudulent scheme charged in said bill of complaint, or of any fraudulent scheme, or otherwise, the said persons, or any of said persons, or this defendant, allowed no accounts to be made or kept whereby the amount of ore mined, smelted or refined, or the value thereof, could be ascertained by any examination thereof.

Denies that said persons, or any of said persons, or that said defendants, kept any account for their own inspection, or that said accounts were concealed by this defendant, or any of said persons, from the minority or other stockholders of the defendant Parrot Silver & Copper Company, or the plaintiffs, or either of said plaintiffs herein.

86 Defendant alleges that it has at all times furnished the defendant Parrot Silver & Copper Company full, true and proper statements showing the amount of ore smelted by it, and the metals refined therefrom, together with the value thereof, and also each and every other detail that this defendant had knowledge of.

As to whether or not the defendant Parrot Silver & Copper Company concealed from its minority shareholders any records or accounts showing any of the transactions set forth in said bill of complaint, this defendant denies that it has any knowledge or informa-

tion sufficient to form a belief, and denies that it has any belief in the premises.

18. Answering so much of the bill of complaint as is contained in paragraph 18, this defendant admits that by the Montana Revised Codes, 1907, Section 4408, et seq., a law passed in 1899 provided that mining corporations in the State of Montana may convey the assets of such corporation in exchange for stock of another mining company, if authorized by a two-thirds vote of the stockholders of the company proposing to make such exchange; and admits that a dissenting stockholder may have the value of his stock appraised in the state court by appraisers appointed by said state court.

Defendant denies that said persons alleged in said bill of complaint to have conspired against the defendant Parrot Silver & Copper Company, or any of said persons, or any persons whomsoever, or at all, except as hereinafter set forth, caused a stockholders' meeting of the defendant Parrot Silver & Copper Company to be held on

87 April 30, 1910, to authorize the conveyance of the assets and property of the defendant Parrot Silver & Copper Company to this defendant in exchange for the stock of this defendant at a rate of exchange established by said persons, or any of said persons, in pursuance of said fraudulent scheme, or any fraudulent scheme. Denies that said persons, or any of said persons, or any persons whomsoever, accepted or caused the defendant Parrot Silver & Copper Company to accept the said stock of this defendant in wilful or other disregard of the rights of the minority or other shareholders of the said Parrot Silver & Copper Company, or otherwise than as hereinafter stated.

19. Defendant denies that in pursuance of any fraudulent scheme, the said persons, or any of said persons, or any persons whomsoever, caused a conveyance to be made of all or any part of the property or assets of the defendant Parrot Silver & Copper Company to this defendant, or caused any conveyances to be made, save and except as hereinafter set forth.

And further answering so much of said bill of complaint as is contained in paragraphs 18 and 19 thereof, this defendant alleges that at a stockholders' meeting of this defendant, held at the principal office of the defendant company, in the County of Deer Lodge, State of Montana, on Wednesday, the 23rd day of March, A. D. 1910, it was resolved, among other things, to authorize the Board of Directors and officers of this defendant to make a proposition to purchase and acquire all the property and assets, of every kind and character, owned or possessed by the defendant Parrot Silver & Copper Company, in consideration of the issuance to the

88 defendant Parrot Silver & Copper Company of 90,000 shares of the full paid capital stock of this defendant; that thereafter such proceedings were had by the proper officers of this defendant as resulted in the submission to the said defendant Parrot Silver & Copper Company of the above proposition, and in its due and proper acceptance by the said Parrot Silver & Copper Company; that in addition to the payment of the said 90,000 shares of the capital stock of this defendant, this defendant agreed to and did

assume all debts and liabilities of every kind and character which had accrued, or which might thereafter accrue, by reason of any past transaction of the said defendant Parrot Silver & Copper Company, up to the date of the transfer and conveyance; that thereafter, to wit, on the 31st day of May, A. D. 1910, a deed of conveyance was duly made, executed, acknowledged and delivered by the defendant Parrot Silver & Copper Company, through its proper officers, conveying and selling to this defendant all of the property and assets, of every kind and character, owned or possessed by the said defendant Parrot Silver & Copper Company, in consideration of, and the payment for by this defendant to the said Parrot Silver & Copper Company, of 90,000 shares of the capital stock of this defendant, and in further consideration of the assumption by this defendant of all of said debts and liabilities so accrued or which might thereafter accrue, as aforesaid, by reason of any transaction of the said Parrot Silver & Copper Company; and this defendant further alleges that it duly caused to be issued by its proper corporate officers, and delivered to the said Parrot Silver & Copper Company, the said 90,000 shares of the capital stock of this defendant.

89 Defendant further alleges that said transaction, by which the said Parrot Silver & Copper Company sold and conveyed to this defendant all of its property and assets, of every kind and character, and by which it received as aforesaid, the said 90,000 shares of the capital stock of this defendant, and by which this defendant assumed all of the debts, liabilities and obligations of the said Parrot Silver & Copper Company, was in all respects a fair, equitable and mutually advantageous contract and transaction.

20. Answering so much of said bill of complaint as is contained in paragraph 20 of said bill of complaint, this defendant denies that it has any knowledge or information sufficient to form a belief, and denies that it has any belief, as to the belief of the plaintiffs, or either of said plaintiffs, in regard to the constitutionality or unconstitutionality of the said state statutes above referred to, or as to whether said complainants believe the said statute is unconstitutional and void because contrary to the provisions of Section 10, Article 1 of the Constitution of the United States, or to the provisions of Article 5 in Amendment of the Constitution of the United States, or for any other reason, or at all.

Denies that the said exchange of stock, provided for by said statute, impairs the obligation of any contract which the plaintiffs, as shareholders of the Parrot Silver & Copper Company, entered into, or of any other contract; and alleges that the said statute has been held to be constitutional by the Supreme Court of the State of Montana in the case of Allen v. Ajax Mining Company, reported in 30 Montana Reports, at page 501, and further alleges that said statute is constitutional.

90 21. Defendant denies that an inspection and appraisal of the property which was owned by the Parrot Silver & Copper Company, and which was conveyed to this defendant by said Parrot Silver & Copper Company, would fail to disclose the true or real value of all of the assets of the said Parrot Silver & Copper Com-

pany; and alleges that the said complainants have a full, complete and adequate remedy, provided for by said statutes, in the ordinary course of law.

Defendant denies that the persons charged in said bill of complaint with having conspired or confederated against the said Parrot Silver & Copper Company, or any of said persons, or that the said Parrot Silver & Copper Company itself, or that this defendant, at any time or in any way, sought or endeavored to procure the above named complainants, or either of said complainants, from taking advantage of said statutes of the State of Montana, providing for an appraisal of the stock of said plaintiffs, owned by them in the defendant Parrot Silver & Copper Company; or that any of said persons, or that this defendant, ever at any time, sought or endeavored to procure the said plaintiffs, or either of said plaintiffs, to institute proceedings under said statutes, or any of said statutes; but defendant alleges upon information and belief that the said complainants, acting freely and voluntarily, and of their own volition, did, on or about the 26th day of May, 1910, institute certain proceedings in the District Court of the Second Judicial District of the State of Montana, in and for the County of Silver Bow, under and in accordance with the terms and provisions of said statutes, by which said proceedings

91 the said complainants, and each of them, sought to have an appraisal made of the stock of the said complainants, and of each of them, which they owned *owned* in the said defendant Parrot Silver & Copper Company.

Defendant further alleges upon information and belief that said causes and proceedings were continued from time to time by the above named complainants, and that the said complainants, and each of them, wilfully delayed said proceedings, and finally caused the same to be dismissed without having attempted to secure any relief or redress therein for any alleged wrongs or injuries suffered, or alleged to have been suffered, by the said complainants, or either of them.

Defendant further alleges that at the time the above entitled suit was filed in the above entitled court, the said proceedings so instituted as aforesaid, by each of the said complainants, under the said statutes, were pending in the above named state court of the State of Montana.

22. As to so much of said bill of complaint as is contained in paragraph 22 thereof, this defendant denies that it has any knowledge or information sufficient to form a belief, and denies that it has any belief, save and except this defendant specifically denies that any act of this defendant, or of which it has any knowledge, ever caused any depletion of the assets of the said defendant Parrot Silver & Copper Company.

23. Defendant denies that it has any knowledge or information sufficient to form a belief, and denies that it has any belief, in regard to the allegations contained in paragraph 24 of said bill of complaint, save and accept this defendant knows that the assets of the said defendant Parrot Silver & Copper Company were never at any
92 time worth the sum of \$50,000,000.00, set forth in said complaint; and defendant alleges upon information and belief

that the said assets of said defendant Parrot Silver & Copper Company were not worth any other or greater sum than that which was represented by the purchase price above set forth as having been paid by this defendant to the said defendant Parrot Silver & Copper Company.

24. Defendant denies that any conveyances whatsoever, made by the said defendant Parrot Silver & Copper Company to this defendant, were caused to be made by the persons charged in said bill of complaint as having entered into a conspiracy to defraud the said Parrot Silver & Copper Company, or by any of said persons, or were made for the purpose of diminishing or depleting the assets of the said defendant Parrot Silver & Copper Company; but avers on the contrary, that this defendant paid to the said defendant Parrot Silver & Copper Company full, adequate and complete consideration for all conveyances and transfers of property made by said Parrot Silver & Copper Company to this defendant.

25. Denies any knowledge or information sufficient to form a belief, and denies that it has any belief, as to any of the alleged matters or things set forth in paragraph 26 of said bill of complaint.

26. Answering so much of said bill of complaint as is contained in paragraph 27 thereof, this defendant denies that the transfer of the stock of the said defendant Parrot Silver & Copper Company to this defendant was upon the basis of \$2,300,000.00, the value of the capital stock at par of said defendant Parrot Silver & Copper Company; but on the contrary, alleges that at the time the said contract of sale was entered into the shares of stock of this defendant were selling upon the market for approximately \$50.00 per share, and that such sale was based upon the value of 90,000 shares of this defendant's stock, and the assumption of all of the debts and liabilities of the said defendant Parrot Silver & Copper Company, without reference to the number of shares into which the aggregate capital of the said defendant Parrot Silver & Copper Company was divided, or the par value thereof; and defendant further alleges that said sale was fairly and equitably arranged upon the basis of the value, location and prospects of all of the property of the defendant Parrot Silver & Copper Company, as nearly as the same could be determined or ascertained.

27. Answering so much of said bill of complaint as is contained in paragraph 28 thereof, this defendant denies that the said persons, or any of said persons, charged with having conspired and entered into a fraudulent scheme as against the said defendant Parrot Silver & Copper Company, or any persons whomsoever, in pursuance of any fraudulent scheme, or otherwise, or that this defendant intended to allow or did allow, in said transfer, for the value only of the quick assets of the mines of the defendant Parrot Silver & Copper Company, irrespective of the value of the large or any ore bodies, or of the dumpings and tailings, or of properties sold and conveyed as specified in said bill of complaint; but alleges on the contrary that the said basis of sale and transfer was arranged upon the full and fair value, as aforesaid, of all of the assets of the defendant Parrot Silver & Copper Company, including the prospective value of its

mines and mining claims insofar as the same could be determined or ascertained.

94 28. Denies that said conveyance and transfer of all or any of the assets of the defendant Parrot Silver & Copper Company was in pursuance of, or the result of, any fraudulent scheme or conspiracy on the part of the persons named in said bill of complaint as having conspired and confederated together, or of any of said persons, or of any persons whomsoever, or at all. Denies that said sale or transfer was for the purpose of preventing an accounting for the ores and the properties taken by this defendant, or for the depletion and diminution, as stated in said complaint, of the assets of the defendant Parrot Silver & Copper Company; but alleges that the said transaction and sale, and each and every element thereof, was in each and every respect, fairly and equitably conducted, and that the defendant Parrot Silver & Copper Company sought to, and did obtain in payment for its property and assets, a full, fair and adequate price therefor. Denies that the assets of the defendant Parrot Silver & Copper Company have been depleted to the extent of \$100,000,000.00, or any other sum or at all; and denies that the total value of the said defendant Parrot Silver & Copper Company's properties amounted to \$200,000,000.00; and alleges on the contrary, that the said purchase price of 90,000 shares of the capital stock of this defendant, and the assumption by it of all of the said debts and liabilities of the said Parrot Silver Copper Company, was an adequate price and valuation for all of the said properties and assets of said defendant Parrot Silver & Copper Company.

29. Denies that if the said conveyance from the said defendant Parrot Silver & Copper Company to this defendant is confirmed and allowed the plaintiffs, or either of said plaintiffs, will be deprived of any right in or to the assets as a shareholder of the said defendant Parrot Silver & Copper Company.

95 Denies that the said conveyance of said property to this defendant, as aforesaid, is fraudulent and void; denies that by any appraisal under the statutes of the State of Montana the plaintiffs, or either of said plaintiffs, will be unjustly, or otherwise, deprived of their rights as shareholders in the defendant Parrot Silver & Copper Company, without due process of law, or otherwise; denies that the said conveyance is a fraud on the rights of the plaintiffs, or either of said plaintiffs, as shareholders of the said defendant Parrot Silver & Copper Company. Denies upon information and belief, that said plaintiffs, or either of said plaintiffs, have persistently or at all applied to the officers of the defendant Parrot Silver & Copper Company to make true statements and accounts, or to restore the assets of the said defendant Parrot Silver & Copper Company to their true or real value; and denies upon information and belief that there has been any refusal so to do upon the part of either the said defendant Parrot Silver & Copper Company, or its officers or agents.

30. Denies that this defendant, without regard to the rights of the plaintiffs, or either of said plaintiffs, as alleged in said bill or complaint, or otherwise or at all, performed, suffered or committed any act for the preparation or commission of any fraudulent act upon

the defendant, Parrot Silver & Copper Company; denies that this defendant, in connection with the United Metals Selling Company, the Raritan Copper Company, or any other corporation or person whomsoever, or at all, ever sought to or does control the production, transfer or sale of copper among the states, or foreign countries; denies that this defendant has any intention or purpose of regulating the sale, price or transmission of copper with the states or foreign nations; denies that this defendant ever contracted to or did purchase the whole or any part of the capital stock of the defendant Parrot Silver & Copper Company, and denies that any contract or combination between this defendant and defendant Parrot Silver & Copper Company, or any other persons whomsoever, so far as this defendant is or was concerned, were contrary to the provisions of the whole or any part of the act of the United States of July 2, 1890.

31. Denies that this defendant by virtue of the mining, sale or transmission of copper, and particularly of the copper mined within the State of Montana, or otherwise, or at all, or by the sale and transportation thereof, to either states or foreign countries did, on or about the 30th day of April, 1910, or at any other time, or at all, attempt to, or that it did, monopolize the whole or any part of the production, sale, transfer or price of copper, either by contract or purchase of the assets of the defendant Parrot Silver & Copper Company, or in any other manner whatsoever, or at all; denies that this defendant, or the said Parrot Silver & Copper Company, ever intended to, attempted to, or did, suppress competition in the copper trade, or at all; denies that this defendant and the said Parrot Silver & Copper Company, or any other corporation or person whomsoever, ever did combine or
 97 conspire or attempt to monopolize a certain or any part of the trade or commerce among the several states of the United States, or other foreign countries, or otherwise or at all, and particularly denies that this defendant, or the said Parrot Silver & Copper Company ever did, or that they, or either of them, ever attempted to monopolize the trade in copper, or particularly the distinctive copper mined in the State of Montana, contrary to the provisions of the Act of the United States of July 2, 1890, or otherwise or at all.

Denies that any of the copper produced from the said Butte District, or elsewhere in the State of Montana, is distinctive from that elsewhere mined, or as an article of commerce or otherwise, is requisite or used to furnish tensile strength to copper mined in other districts.

Defendant further, except as hereinbefore specifically admitted or denied, denies each and every allegation contained in said complainants' bill of complaint.

Wherefore, this defendant, having fully answered, confessed, traversed, avoided or denied all the matters in said bill of complaint material to be answered according to its best knowledge and belief, humbly prays this Honorable Court to enter its judgment that this defendant be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained; and for such further and

other relief in the premises as to this Honorable Court may seem meet and in accordance with equity.

ANACONDA COPPER MINING
COMPANY,

By JOHN D. RYAN,

Director of Defendant Anaconda Copper Mining Company.

98

Attest:

[SEAL.] C. F. KELLEY,

Its Secretary.

L. O. EVANS,

W. B. RODGERS,

D. GAY STIVERS, &

C. F. KELLEY,

*616 Hennessy Building, Butte, Montana,
Solicitors and of Counsel for Defend-
ant Anaconda Copper Mining Com-
pany.*

Service of the foregoing acknowledged and a true copy received this 3rd day of July, 1911.

J. W. FREEMAN,

Attorney for Complainants.

Filed July 3, 1911. Geo. W. Sproule, Clerk.

99

Thereafter, on August 1, 1911, Replication to the separate Answer of defendant Anaconda Copper Mining Co. was duly filed herein, in the words and figures following, to wit:

100 In the Circuit Court of the United States, Ninth Circuit, in and for the District of Montana.

WILLIAM E. WALL and LOUIS FOSS, Complainants,

v.

PARROT SILVER AND COPPER MINING COMPANY and ANACONDA
COPPER MINING COMPANY, Defendants.

Replication.

These replicants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the separate answer of said defendant, the Anaconda Copper Mining Company, and for replication thereunto sayeth that they do and will ever maintain and prove their said bill to be true, certain and sufficient in law to be answered unto by said defendants, and that the answer of said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by these replicants; without that, that any other matter or things in the said answer contained material and effectual in the law to be replied unto and not herein and hereby

well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things these replicants are ready to aver, maintain and prove as this Honorable Court shall direct, and humbly as in and by their said bill they have already prayed.

HARRISON DUNHAM,
ASA P. FRENCH,
JAS. W. FREEMAN,
Attorneys for Complainants.

Service of within Replication admitted Aug. 1, 1911.

C. F. KELLEY,
L. O. EVANS,
Att'ys for Def'ts.

Filed Aug. 1, 1911. Geo. W. Sproule, Clerk.

101 Thereafter, on August 1, 1911, Replication to the separate Answer of defendant Parrot Silver & Copper Mining Co. was duly filed herein, in the words and figures following, to wit:

102 In the Circuit Court of the United States, Ninth Circuit, in and for the District of Montana.

WILLIAM E. WALL and LOUIS FOSS, Complainants,

v.

PARROT SILVER AND COPPER MINING COMPANY and ANACONDA
COPPER MINING COMPANY, Defendants.

Replication.

These replicants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the separate answer of said defendant, the Parrot Silver and Copper Mining Company, and for replication thereunto sayeth that they do and will ever maintain and prove their said bill to be true, certain and sufficient in law to be answered unto by said defendant, and that the answer of said defendant is very uncertain, evasive and insufficient in the law to be replied unto by these replicants; without that, that any other matter or things in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things these replicants are ready to aver, maintain and prove as this Honorable Court shall direct, and humbly as in and by their said bill they have already prayed.

HARRISON DUNHAM,
ASA P. FRENCH,
JAS. W. FREEMAN,
Attorneys for Complainants.

Service of the foregoing Replication admitted Aug. 1, 1911.

L. O. EVANS,
C. F. KELLEY,
Att'ys for Def'ts.

Filed Aug. 1, 1911. Geo. W. Sproule, Clerk.

102½ Thereafter, on April 2, 1914, the death of complainant Louis Foss was suggested to the court and an order made and entered substituting Etta Foss, Executrix, as complainant in the place of said Louis Foss, deceased, as follows, to wit:

In the District Court of the United States in and for the District of Montana.

No. 464.

WM. E. WALL et al,
vs.
PARROT SILVER & COPPER CO. et al.

This cause came on regularly for hearing at this time, R. L. Clinton, Esq., appearing on behalf of complainants, and Messrs. L. O. Evans and W. B. Rodgers appearing on behalf of defendants. * * * And now at this time counsel for complainants announced the death of Louis Foss, one of the complainants herein, and the appointment of Etta Foss, as Executrix of said Louis Foss, deceased; and thereupon, upon motion of counsel for complainants, said Etta Foss, Executrix, is hereby substituted as a party complainant herein in place of said Louis Foss, deceased.

Entered, in open court, April 2, 1914.

GEO. W. SPROULE, *Clerk.*

103 Thereafter, on July 31, 1914, the Decision of the Court was duly rendered and filed herein, in the words and figures following, to wit:

104 In the District Court of the United States in and for the District of Montana.

No. 464.

WILLIAM E. WALL and LOUIS FOSS, Complainants,
vs.
ANACONDA COPPER MINING COMPANY and PARROT SILVER AND
COPPER COMPANY, Corporations, Defendants.

Decision.

This is a suit to avoid an executed sale of all the property of the defendant Parrot Company to the defendant Anaconda Company, both defendants Montana mining corporations.

Plaintiffs own 1,210 shares of 230,000 shares, 229,850 issued, the capital stock of the Parrot Company.

The complaint alleges that in 1899 A. C. Burrage, William Rockefeller, H. H. Rogers and more than fifteen named "other persons" purchased the majority of Parrot stock and at all times thereafter controlled the corporation pursuant to a conspiracy by them entered into to dissipate the company assets and to acquire them at less than real value, the sale being the successful termination of the conspiracy. The methods thereto employed are detailed at great length. In substance they are abandoning, closing and dismantling the company's refinery and smelters, excess costs in mining, smelting and refining its products, unauthorized and concealed transfers of its personal and real property without consideration or for inadequate consideration and in part in trust for the "other persons" and to the Anaconda Company and other corporations controlled by them, mismanagement of the Parrot company's mines so that mining was and is at a loss, concealment of company assets, duplicate private concealed false and fraudulent reports accounts and books and denial to plaintiffs of access thereto, change of the company from a profitable to an unprofitable concern, infliction of losses

105 upon it aggregating \$100,000,000, and the sale involved at a valuation of \$2,300,000, in consideration of 90,000 shares of Anaconda stock of the par value of \$25, whereas the actual value of Parrot tangible assets was \$100,000,000, and of its rights of action arising out of the acts aforesaid \$100,000,000 or a total value of Parrot property so sold of \$200,000,000. Plaintiffs also allege that they protested against the sale and thereafter proceeded in the proper state court of Montana to secure appraisal of their stock and payment of its value, but that therein they cannot secure appraisal of the company's rights of action arising from the conspiracy and so can not secure the actual value of their stock. There are also allegations that the sale is obnoxious to the Sherman Antitrust Act but this was abandoned at final hearing.

The complaint does not directly allege that all or any of the wrongful acts aforesaid were not known to the stockholders either when they were committed or when the sale involved was by them directed.

The prayer is avoidance of the sale, a receiver to take an account between defendants, payment of any excess due from Anaconda to Parrot, and sale of all assets of Parrot with distribution of the proceeds to stockholders. The answers are denials and explanations of specific transactions attacked in the complaint. A great volume of testimony and other evidence has been submitted, entirely by deposition and master's report.

It appears the sale involved was made in April 1910 by virtue of statutes of Montana, which in substance provide that any Montana Mining corporation at any time so directed by the vote of holders of two thirds of its outstanding stock authorizing a sale or accepting a proposition from any one to buy all the corporate property for cash, property or capital stock of any other corporation, shall sell and convey in accordance therewith even as though all

stockholders had consented thereto; and thereupon the vendor is dissolved and to be wound up as in other cases, that any dissenting stockholder may proceed in court to secure appraisal of the value of his stock and judgment therefor including expenses and costs shall be entered against both vendor and vendee, a lien upon all real property sold.

Sections 4409-4412 R. C.

These statutes vest power, unknown at common law, in holders of two thirds of the issued stock of any Montana mining corporation, for any reason at any time to any one at any price for any consideration to sell all corporate property inclusive of choses in action and to dissolve the corporation. Motive, vendee, price, consideration are all immaterial provided the transaction be free from fraud. Every stockholder therein consents thereto when he becomes a stockholder, and it is part of his contract with all other stockholders and the corporation.

In a fair sale a dissenting stockholder has but the remedy of appraisal wherein he secures the value of his shares. That is, the value of his equitable interest in all corporate property inclusive of corporate choses of action arising from fraudulent management or otherwise.

In a fraudulent sale, he has a choice of two remedies,—appraisal or avoidance of the sale. He can not have both and the choice of either estops to thereafter claim the other or at least a choice of appraisal with knowledge of all material facts is in its nature condonation of the fraud and acquiescence in the sale, and he can not thereafter inconsistently maintain suit to avoid the sale. All this is of the general law of sales, as applicable to corporate sales by virtue of these statutes as to any sale. Defendants contend plaintiffs having elected appraisal are estopped from this suit.

The complaint sets out that plaintiffs proceeded to appraisal and does not allege lack of knowledge of acts and facts which might relieve them from their election. Having elected, prima facie they are estopped from the right and remedy of this suit and the burden is on them to plead and prove otherwise. Regardless of the pleading and burden of proof, consideration of all the evidence discloses that when plaintiffs began their appraisal action they had knowledge of all facts and fraudulent acts alleged in this suit, in so far as they are sustained by proof, to the extent any stockholder has or may have of corporate transactions openly accomplished.

It follows they so far acquiesced in the sale as to elect appraisal and so can not recede therefrom and secure the inconsistent remedy of avoidance of the sale.

At the same time it is considered the court's findings on all issues should appear. In addition to the insufficiency of the complaint to excuse election, it is doubtful if the complaint can be maintained in any event. It is upon the theory of rescission or avoidance of a fraudulent sale, yet for all expressly alleged therein plaintiffs and

all stockholders may have had at the time they directed the sale knowledge of all the acts alleged to constitute the fraud.

If they had, their consent was free and the sale valid. If, however, it be assumed that from the allegations of control, secrecy and concealments this lack of knowledge be inferred, the evidence fails to prove either fraud or lack of knowledge. When the sale was made the Amalgamated Copper Company owned a majority of the stock of both Parrot and Anaconda. Burrage and some of the "other persons" had organized the Amalgamated and were interested in all three corporations, likely controlled them by majority ownership of shares and inter-locking directorates. This is of less significance than ordinarily, in that not the directors but holders of two thirds of Parrot shares ordered this sale, and neither Amalgamated nor the "other persons" nor all united held the requisite two thirds.

If because thereof the sale should be more closely scrutinized, yet in view of the statutes aforesaid the burden to satisfy the court that it is fraudulent and voidable is upon plaintiffs who allege it. If unfair on its face, ambiguous or suspicious, the burden of explanation may shift to those defending the sale's integrity.

At the outset it is noted that in so far as losses might accrue to Parrot from the acts complained of, the holders of the majority of Parrot stock would proportionally suffer. Their other interests would not relieve therefrom. So far as the evidence goes it is that

108 in 1899 some few of the "other persons" including Burrage, Rockefeller and Rogers, purchased a little more than half of Parrot stock. About two years thereafter this stock was sold to Amalgamated and it thereafter controlled, as it lawfully might, Parrot operations. Therein, methods and instrumentalities changed. A refinery, an operating smelter and an unfinished smelter were dismantled and sold. Some thereof, particularly salvage, were sold to Anaconda but for fair prices.

The developed Parrot mine was of the earliest in the Butte, Montana, mining district. Its productive operations covered some twenty-five years. Several million dollars in dividends were paid. But several years before this sale its commercial ore bodies were practically exhausted, dividends ceased, operations were at a loss, and much exploration developed no new and valuable ore deposits. Complex geological conditions involved Parrot in "apex" controversies with neighbors and these were settled in the main to Parrot's advantage. True and correct reports, accounts and books were made and kept, accessible to all stockholders and inspected, experted and copied so far as desired by plaintiffs before this suit. At the time of this sale Parrot was but a shadow of its former self. But its main mining property was well located and it owned outlying mining property of no developed worth, so that taken as a whole it had probabilities and possibilities and was of actual and speculative value.

All this and all acts of management were open and known at the time of occurrence and before and at the time of the sale. As an illustration the complaint alleges a loss to Parrot of \$50,000,000., in that it was constrained to convey without consideration to another corporation in which the "other persons" were interested the "Blue Vein" ore bodies to which Parrot's title had been finally determined

by litigation, the truth being that there were "apex" controversies over the "Blue Vein," said ore bodies were neither large nor of great value, there was no litigation, the adverse claims passed to a corporation in which Amalgamated had no interest though some of the "other persons" had, and a compromise was authorized by a meeting of Parrot stockholders in September 1906, which compromise was effected and wherein Parrot received more than it yielded.

The complaint is replete with allegations of fraudulent acts so variant from what the evidence shows to be true, from what plaintiffs knew to be true or could have so known, that it appears reckless and in part to the point of willful falsehood.

To this another illustration is the allegation of conveyance of Parrot property in trust for the "other persons," no such property ever having existed. All this appearing, any suit is discredited. It is argued that since Parrot while controlled by the "other persons" declined to unprofitableness in large measure fraud is thereby proven. Not necessarily or at all. Parrot like all mines lessened in value with every ton of ore extracted and came to the end of its visible resources. Its ore bodies were exhausted. Further development may revive it, but that is for the management's judgment to direct; and that development done disclosed no valuable ore bodies does not support the allegation and argument that the "other persons" have not discovered and so have concealed valuable ore bodies; corporate management not ultra vires is of unlimited discretion, and free from fraud only stockholders and not courts can control it.

But the court is admonished it must bear in mind that the "term Rockefeller" is a synonym for "secretiveness," "successful manipulation," "sly and subtle machinations," "sphinx-like mystery," only known by results. However that may be, however effective on the stump and curb, it is of no impressiveness in court.

Herein, the fraud charged must be proven and by legal evidence, and not merely alleged in pleadings and for proof rested upon argument and oratorical endeavor. Finding no fraud in the sale, finding the stockholder's consent was free, it is unnecessary to inquire into the purchase price. That was determined by the holders of two thirds of Parrot stock, Amalgamated holding but a little more than half said stock. They satisfied, none can complain. They could direct a corporate sale for any consideration even as they individually could make personal sales. Doubtless gross inadequacy might be a circumstance in a fraudulent sale. Aside from that, the dissenting stockholder has a plain, speedy and adequate remedy at law in the appraisal proceedings provided by the statutes, wherein he secures the value of his shares though the others receive from the sale but a tithe thereof.

It appears, however, that when this sale was made Anaconda stock had a market value ranging from \$35.00 to \$45.00 per share. Conditions were such that Parrot was not worth to itself or to any other independent concern the amount Anaconda in view of its resources and facilities could afford to and did pay.

The value of any mining property is a problem, and here it seems to have been solved fairly to Parrot. The purchase price was fair

value and adequate, the sale was valid, plaintiffs elected the remedy of appraisal, they have no right and there is no reason to rescind or avoid the sale, and decree accordingly will be entered.

July 31, 1914.

BOURQUIN, J.

Filed July 31, 1914. Geo. W. Sproule, Clerk.

111 Thereafter, on September 16, 1914, Decree was duly filed and entered herein, in the words and figures following, to wit:

112 In the District Court of the United States in and for the District of Montana.

No. 464.

In Equity.

WILLIAM E. WALL and LOUIS FOSS, Complainants,

vs.

ANACONDA COPPER MINING COMPANY and PARROT SILVER & COPPER COMPANY, Corporations, Defendants.

Decree.

This cause came regularly on to be heard before the court on the evidence theretofore taken, and was argued by respective counsel and submitted to the court, and thereafter, on the 31st day of July, 1914, after full consideration thereof, the court rendered its opinion and decision and findings upon the facts and the law, finding that complainants are not entitled to any relief prayed for in this action, and that complainants take nothing by this suit.

It is therefore ordered, adjudged and decreed by the court that the complainants take nothing by this suit, and that the bill of complaint, as amended, be, and the same is hereby, dismissed upon the merits, and that the defendants, Anaconda Copper Mining Company and Parrot Silver & Copper Company, do have and recover of the complainants, William E. Wall and Louis Foss, their costs in this action in the sum of \$409.10, the amount thereof to be inserted herein when taxed, according to the rules and practice of this court.

Done in open court this 16th day of Sept., A. D. 1914, at Butte, Montana.

GEO. M. BOURQUIN, Judge.

Filed & Entered Sept. 16, 1914. Geo. W. Sproule, Clerk.

113 Thereafter, on August 12, 1915, an Order approving Statement of the Evidence on Appeal was duly made and entered herein, as follows, to wit:

In the District Court of the United States in and for the District of Montana.

No. 464.

WM. E. WALL et al.

vs.

PARROT SILVER & COPPER Co. et al.

This cause came on regularly for hearing at this time for settlement of the record on appeal herein, Asa P. French, Esq., appearing for the plaintiffs, and L. O. Evans, Esq., appearing for the defendants. Thereupon, by consent, plaintiffs were granted leave to amend their Petition for Appeal and Assignment of Errors heretofore filed, and thereupon said Petition for Appeal was duly allowed. Thereupon, after hearing and due consideration had, it was ordered by the court that the record on appeal consist of that proposed by the plaintiffs with the additions proposed by the defendants, and that in so far as the testimony is in question and answer it be so set out. Thereupon bond on appeal was presented, and, being acceptable by defendants, was approved and filed.

Entered, in open court, August 12, 1915.

GEO. W. SPROULE, *Clerk*.

The Statement of the Evidence proposed by the Plaintiffs, filed June 10, 1915, together with the additions proposed by the defendants, filed June 25, 1915, as approved by the court, is in the words and figures following, to wit:

114 United States District Court, District of Montana.

No. 464. Equity.

WILLIAM E. WALL et al.

vs.

PARROT SILVER & COPPER COMPANY et al.

Appellants' Statement of Portions of Depositions essential to Decision of Questions presented on Appeal, reduced to simple and condensed narrative Form under Rule 75 of the Rules and Practice in Equity; together with Copy of Deed, Transcript of Statute and Copies of Charter and Extension of Charter of Parrot Silver & Copper Company; being items (5) to (10) inclusive of appellants' præcipe.

ASA P. FRENCH,
ROBERT L. CLINTON,
Solicitors for Appellants.

115 *Deposition of Albert C. Burrage (a Witness for the Complainants).*

My name is Albert C. Burrage. I am fifty-two years old and live in Hanson, Massachusetts. I am a lawyer and have been interested in mining properties since about 1897 and in mining properties in Butte, Montana, since about 1898; have had to do with the defendant Parrot Silver & Copper Company. My first acquaintance with it was in 1898. I acquired a few shares of the stock of the company early in 1899. I knew Henry H. Rogers since 1893 and have been interested with him in mining enterprises. In the early part of 1899, I think, I had something to do with the negotiations for the purchase of shares in the Parrot company. I was in Butte in January of 1899 for several weeks and went over the Parrot property to consider the question of acquiring it for myself and others. I think that at that time I had some interviews with local representatives of the Parrot company and subsequently there were negotiations in New York with which I was familiar and in which I took part. These negotiations were between the principal owner of the Parrot Silver & Copper Company, Franklin Farrell of Connecticut and Henry H. Rogers. The negotiations were with a view to the purchase of a large interest in the Parrot Company and as a result a purchase was made of a very large number of shares of that company in the early part of 1899. I am sure more than half the shares were purchased. I do not remember exactly how many shares were purchased or how much was paid for them. I had more or less to do with the negotiations. Primarily I represented Mr. Rogers.

116 He decided for himself what he wanted to do and I was merely a part of the negotiations. I have no recollection whatever what his instructions to me were. I do not recall anybody except Mr. Rogers and myself who participated in these negotiations nor have I the slightest recollection as to who took title to the stock. The transfer was made in New York. Previous to that transaction I had several conversations with Mr. Rogers with regard to it, but it is utterly impossible for me to state their substance. I talked with him many times regarding the general purpose of the purchase, which was to get as large an interest as possible in the profitable mines of Butte, believing that it had a great future. The Parrot was not the first. The first was the Butte & Boston. It was at Mr. Rogers' request that I went to Butte. My purpose and that of the other gentlemen associated with me was to acquire control of these mines if we could. In the early part of 1899 I went to Butte for the special purpose of looking into the Anaconda mines and the properties of the allied companies. I spent about a month there doing that. I made no trade for those mines or companies or shares in them at that time. I returned to New York and had a number of interviews concerning them with Mr. Rogers. This was in the early part of 1899. It must have been February or March or thereabouts. As a result of that Mr. Rogers took up the negotiations with the principal owners of Anaconda and a large interest in that company was purchased by him and those who were with

him. This was the second step in acquiring interests in these mining properties, I think. In the early part of 1899 the Amalgamated Copper Company was formed in New Jersey and took over various interests in Butte. I can remember some of them. I know there was a large interest in the Anaconda, the Washoe and the big Black-foot Lumber, the Coal Mines of Belt, Montana, and Diamondville, Wyoming, and those shares of the Parrot and the Colorado. These are all that I recall. If I remember correctly the stock of these

117 various companies in which an interest was acquired, the Parrot and others, was turned over to the Amalgamated which was a holding company and in no sense an operating company. I became an officer and director of the Amalgamated from the beginning and am still a director; and have never held any other office in the company. The capital stock was \$75,000,000 and the shares were of the par value of \$100 each. I think it was all paid in in cash by the subscribers. Marcus Daly was the first president and Mr. Rogers succeeded him. I do not remember a thing regarding the report which I made to Mr. Rogers regarding the Parrot property. At the time this stock was acquired the Parrot company was a going concern and had been in successful operation for some years. I do not recall how long. It did its own smelting and refining; the former in Butte and the latter in Bridgeport, Connecticut. The Parrot then owned mines in Butte, a smelter a couple of miles away on the flats below Butte, and a refinery at Bridgeport. I think the latter was a separate company in which the Parrot owned the shares but I am not sure. These are all that I recall. Copper was the ore mined. I think a very slight amount of gold and silver was in the ore but my recollection is that the gold and silver were insignificant. I do not know whether the smelter is used now or not and have no knowledge of my own of its having been used for the last ten years. I do not know whether it is in existence or not. I think the ores of the Parrot are now smelted at Anaconda; I do not know for how long, but I think several years. As to the refinery at Bridgeport, if I remember right it was shut down a good many years ago. I do not know why but I presume because the work could be done cheaper elsewhere. The refining of the Parrot ores is now done, I think, by or through the Anaconda at the Raritan Works in New Jersey. The idea of incorporating the Amalgamated was undoubtedly mine although of course it was as much Mr. Rogers'. His was the master mind.

The stock of these various companies that I have described
118 became a part of the assets and capital stock of the Amalgamated Company. Mr. F. P. Addicks, now deceased, was assistant treasurer and finally treasurer of the Amalgamated. I think he was a director of the Parrot but I am not sure. Mr. A. W. Bemis was one of the original incorporators of the Amalgamated and I think a director of the Parrot. Mr. Charles D. Burrage became treasurer of the Parrot and was one of the incorporators of the Amalgamated.

119 *Deposition of Richard W. Willard (a Witness for the Complainants).*

My name is Richard W. Willard. I am forty-nine years old. I live in Brookline, Massachusetts. I am purchasing agent for the Boston Consolidated Gas Company and several other companies. I was one of the original subscribers for the original allotment of the Amalgamated Copper Company and secured ten shares of which I owned a part, the brokers owning the balance. I suppose the legal ownership was really vested in me. I held it for two years or more until it went above par and then sold it.

Q. At the request of Mr. Burrage and Mr. Rogers did you take any part by signing papers or otherwise or delivering securities or in any way in the transfer of the stock of the Parrot Company to Mr. Rogers and those interested with him?

A. There were probably a good many occasions on which I signed papers, but for the most part I do not recall what the papers were now, and the chances are that I did not scan them particularly closely at the time. I was asked to sign them and probably did so.

After the acquisition by the Amalgamated of its interest in the Parrot I believe I became a director of the Parrot Company. I am unable to say at whose suggestion. I remained a director for several years; I don't remember exactly.

I attended the meetings of the directors when I had notice of them, as far as I know and I presume that I voted; acted as director I presume. I do not know where I got my stock from or whether I ever had any in my possession nor how many shares were in my name. I was acting in the interests of other persons, I presume. In whose I don't know.

I do not remember being present at a Directors' Meeting in Boston or or about April 13, 1900, when anything was done with
120 reference to the sale of shares of capital stock of the Bridgeport Company nor whether or not I was present at any meeting held April 13, 1900. I do not remember any meeting held on or about May 13, 1902, at which the sale of surface lands to one John O'Brien in Silver Bow County, Summit Valley Mining District, was acted upon. Nor do I remember a meeting at some time in March, 1903, in which a contract was authorized with the United Metals Selling Company.

I remember there was a meeting at which some of the property was sold, perhaps several meetings, but I know there were meetings where action was taken with regard to the sale of property but just what it was I do not now recall. I simply remember that it was a sale of property but that is the extent of my recollection. I do not remember what the property was, what it was sold for, to whom it was sold or why it was sold.

Q. Did you have any real interest in any of these things at the time, any personal interest?

A. My interest was the same then as you have outlined previously I think.

Q. Well that is not exactly an answer to my question. Did you have any real concern or interest in any of these matters individually?

A. I suppose the answer to that is No. I don't know just exactly what the meaning of your question is.

Q. How long did you remain in the directorate of the Parrot Company?

A. I don't remember. It was some years. I don't remember how long.

121 *Deposition of Edward G. Storey (a Witness for the Complainants).*

My name is Edward G. Storey. I am fifty-four years old. I live in Boston. My occupation is that of clerk to Mr. A. C. Burrage with whom I have been associated for twelve years. At one time I held some stock in the Parrot Company. I really don't know who owned it. I think I received it from Mr. C. D. Burrage. The amount was five shares. I never had any personal pecuniary interest in the Parrot Company. I became a director. Somebody notified me. I have forgotten who it was. I don't remember whether I knew that I was going to be elected before I was notified of the fact. I think it was sometime in the spring of the year 1899. I remained a director six or seven years.

Q. Did you take any active part in the directorate?

A. I was at some of the directors' meetings.

Q. Well comparatively few or most of the meetings?

A. Well I couldn't say as to that.

Q. What interest or interests did you represent in the directorate?

A. Why I don't know.

I can't remember any of the meetings of the directors of the Parrot Company when the question of the disposition of any of its assets was considered and passed upon. If I was present at any such meetings I have not retained the slightest recollection of what transpired. Of course I had no personal interest in the thing.

I don't remember anything with regard to the disposition and sale of the Bridgeport property, but I heard the Bridgeport property mentioned. I think I went down there once, some time early in 1899. It was just to see a Mr. Judson and look over the

122 thing out of curiosity.

Q. What curiosity did you have in it?

A. Well I knew the thing had come into the family, so to speak, and I thought I would like to see what it looked like.

Q. What do you mean by the "family"?

A. Come into the Amalgamated Copper Company that we were all more or less interested in.

I never had seen a refinery before; it was then in operation.

123 *Deposition of Charles D. Burrage (a Witness for Complainants).*

My name is Charles D. Burrage. I am fifty-four years of age. I reside at Needham, Massachusetts. I am a lawyer and an officer in, and attend to the business of, a number corporations. I am a small stock-holder in the Parrot Silver & Copper Company. I was once a director in that company and an officer. I have been a director and secretary-treasurer of the Parrot Silver & Copper Company and a director and secretary-treasurer of the Bridgeport Copper Company, a subsidiary of the Parrot. The Parrot owned most of the stock, if not all, of the Bridgeport Copper Company. I first became a stock-holder in the Parrot Company in April, 1899, to the extent of five shares and never increased that holding, and I became a director at that time. I also became secretary-treasurer of the company at practically the same time and remained the secretary-treasurer and director about six years. I was one of the original incorporators of the Amalgamated Company but went out the same day that the company was formed. I went over to Jersey City and helped to organize the company. The others who were prominent in the formation of the company were Mr. Storey and Mr. Willard, the two witnesses who have already testified. I did this at the request of my brother, Mr. A. C. Burrage. I was present when a block of stock of the Parrot Company was delivered at some trust company on Broadway, New York. That must have been in April 1899, in the early part of April. There were a lot of stock-holders of the Parrot Company that sold their stock. This stock was physically delivered to Miss Kate Harrison who was the

124 confidential clerk to Mr. Henry H. Rogers. I haven't any idea how much stock was turned over. I went with Miss Harrison, I think at my brother's request, more as security for Miss Harrison than anything else, security against any possible robber or anything of that kind while we went through the streets. I remember that there was some stock delivered and money paid. That is practically all I do remember. I recall that it involved a large amount of money but whether hundreds or thousands or millions or anything else I have forgotten entirely. I have no way of refreshing my memory on it. It is a great many years ago and I have been through a great many transactions since that time and I can't discriminate between the different ones. I don't remember what was paid per share for the Parrot stock. As to the Bridgeport refinery it didn't pay, it was not profitable, it was expensive to run, they could get their work done elsewhere better and it was shut down.

The dividends of the Parrot Company are considerably less now than they were during some of the time when I was treasurer. I do not remember the maximum which they attained during my treasurer'ship, nor the minimum.

Q. When you went into office in the Parrot Company what property of the Company was there at Gaylord?

A. I don't remember very much about property there but I think they had started to build a smelter there, a new smelter. It was never completed to my knowledge.

"I don't remember what the Bridgeport refinery was valued at upon the books of the company at the time it was shut down; my recollection of it is that this refining plant could not be run economically because it was expensive to run; I could not state after all these years, how much more it was expensive to run than the place where it was refined. I haven't any figures in my mind. I don't remember any other reason for running it; it was not a very valuable plant. After we shut it down I had to sell it, and I know we could not get an offer for it for anything at all. It was not worth very much; the buildings were old and not very good, and I know I tried very hard to sell the land. The buildings, if anything, did not help much of the land; I don't recall now what it was taxed for, but I don't think we could get the taxed value."

125 *Deposition of Sidney Chase (a Witness for Complainants).*

My full name is Sidney Chase. I am 65 years old. I live in Boston and am a stock broker but am not now in active business. I came out of the firm of Chase & Barstow a year ago. Knew Henry H. Rogers very well. I had known him since 1867, 1868 or 1869, somewhere along there, and had frequent business transactions with him. I have known A. C. Burrage for a good many years, and for some time prior to 1898 and 1899. The firm of Chase & Barstow had quite extensive transactions with him. I had known Charles D. Burrage for about the same length of time. I think I was one of the original subscribers to the Amalgamated Company. I owned some stock in the Parrot Company and in the Butte Coalition and in the Boston & Montana. I think I bought the Parrot stock about the time or soon after I became a director in April, 1889. I was notified that I had been elected a director. I am still a director. I was at one time vice-president, and during all that period have been familiar in a general way with the affairs of the Company. With respect to the transfer of any part of the properties of the Parrot Company during my term as director I think the last transfer of all the assets to the Anaconda Company is the one most familiar to me. That was in April, 1910.

126 *Deposition of Charles H. Bowen (a Witness for Complainants).*

My name is Charles H. Bowen. I live in Boston, and am 45 years of age. I am Secretary of the American Trust Company, and have been for twelve years. The American Trust Company is the transfer agent of the Parrot Silver and Copper Company and has been since September, 1898. I have the transfer book with me. No

stock of the Parrot Silver & Copper Company now stands in the name of William G. Rockefeller. Some stood in his name at some time within the last year and was transferred from him on April 4, 1912 to the Amalgamated Copper Company. The amount was 110,000 shares. Prior to that time these shares had stood in the name of William G. Rockefeller since December 31, 1909. On December 27, 1909, 112,000 shares stood in his name. I do not know — long he held 112,000 shares in his name. I can give the record as the book shows it here. The first entry on his account was May 10, 1904, 115,719 shares. On December 27, 1909, 3,719 shares were debited to his account, leaving a balance of 112,000. The 3,719 shares were transferred to Frederick C. Haskins of the Ames Building, Boston. So far as I have any record no stock of the Parrot Company stood in the name of William G. Rockefeller prior to May 10, 1904. The 115,719 shares were transferred to him on May 10, 1904, by sundry individuals, namely, Arthur W. Bemis, 15,719 shares, Sidney Chase 50,000 shares, Charles D. Burrage 50,000 shares. I have an account in the name of F. P. Addicks. Sundry shares previously in his name aggregating 6300 were transferred March 15, 1912, to the Amalgamated Copper Company. The first transfer of stock of the Parrot Silver & Copper Company to the

Amalgamated Copper Company was December 30, 1911, a
127 total of 11,101 shares, and the last transfer is under date of April 11, 1912, 50 shares. The total amount of Parrot stock

now standing in the name of the Amalgamated is 224,402 shares. This included the 110,000 shares transferred to the Amalgamated on April 4, 1911, by William G. Rockefeller. I have no account in the name of the Anaconda Copper Mining Company, or the name of any company of which the name Anaconda is a part. I have the account of William E. Wall, one of these complainants, before me. It shows that there were issued to him under the address, 73 Mayfield Street, Dorchester, on November 14, 1902, three certificates for 100 shares each, and one for 50; and on November 15, 1902, two certificates for 100 shares each and one for 50; on August 17, 1904, one for 100 shares and one for 25 shares; on August 18, 1904, one for 100 and one for 25 shares; on January 14, 1909, 50 shares; in the name of William E. Wall, 620 Atlantic Avenue, Boston, 1,000 shares. I do not know of my own personal knowledge whether William E. Wall at that address is the same person as the William E. Wall whose address is given at Dorchester. This makes a total holding under both addresses of 1625 shares.

As to Louis Foss, the other complainant, 100 shares were issued to him on August 15, 1907, and 90 other shares on the same date; on August 16, 1907, 10 shares; on December 29, 1910, 5 shares, making a total of 205 shares.

I find that the transfer books so far as we know are still open.

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Deposition of William E. Wall.

My name is William E. Wall. I am 52 years of age, and am one of the complainants named in this bill. I live at 73 Mayfield

Street Dorchester, which is a part of Boston. I have always lived there, and am a citizen of Massachusetts. I am a wool dealer at 620 Atlantic Avenue, Boston, and have been for about 35 years. When this bill in equity was brought I was the owner of 1005 shares of the Parrot Silver & Copper Company. My attention was first called to the fact that a sale of Parrot assets to the Anaconda Company was in contemplation, in April, 1910. In consequence of that information I went out to Butte, and before this suit was brought saw some of the officers of the Company. I then went on to New York and met Mr. F. P. Addicks. That was in April, I think, of 1910.

Mr. Foss and four others, Mr. Richardson, Mr. Jackson, Mr. Bradford, and Mrs. Knight, all stockholders of the Parrot Company owning in the aggregate 3510 shares, or so, joined together and made an application to have the property appraised under the laws of Montana, and I went out there to Montana about the middle of July, 1910. I was there three or four weeks.

I told Mr. F. P. Addicks and Mr. A. H. Melin that if the thing was as they represented it I was willing to accept their proposition, but I thought it was otherwise, and I would like to know whether the property was worth 9/23rds of the price of the Anaconda or not. That is why I wanted to look at the books to see about the property, the entire property, Bridgeport and New York. The proposition to which I refer was to accept 9/23rds of the price of Anaconda, that is to say, 230,000 shares of Parrot would be exchanged for 129 90,000 shares of Anaconda.

Q. And you finally declined to accept that proposition, did you?

A. Yes, sir.

Q. And brought this suit?

A. Yes, sir.

Q. Did you make any effort to notify the stockholders at a meeting held at Butte protesting against the sale?

A. I did, sir.

Q. What did you do?

A. I appeared in person with an attorney out there and had our case postponed at the request of Mr. Kelly (counsel for the defendants). He wanted to go away. I protested then.

Q. Did you send any letter addressed to the stockholders or to any officers of the Company at Butte protesting against the sale, or any sale?

A. Yes, sir.

After I learned of the contemplated sale of the Parrot to the Anaconda, I went out to Butte and engaged counsel out there to look out for my interests and objected.

This was about the middle or last of June 1910, and I stayed out there for about a month looking around and ascertaining the condition of the mine and its surroundings. Then I came east and went to New York and saw Mr. Addicks first, and asked him to let me look at the books. I was referred to Mr. Garver (of counsel for the defendants), and after three or four days I was allowed to look at their books, the cash, the journal and the ledger, and also the

minutes there, of which I took copies. Then I came home, and from what I found out from the minutes it was in a different condition than I supposed it was, and I went on again and I met Mr. C. F. Kelly, the Montana counsel and Secretary of the Company, and Mr. A. H. Melin. I told them in substance that from what knowledge I got from the minutes that they were not allowing anything equitable to the stockholders of the Parrot, and I showed him where
 130 property had been disposed of and not accounted for; that from the assessor's lists from 1898 down to the present time different properties were not accounted for, and the destroying of the smelter at Parrot and one at Butte; that I didn't think they were treating the stockholders equitably at all. At that time after talking with him three hours I gave him this bill in equity and we didn't file it for a month afterwards. I gave him a draft of this bill. When I handed it to him I said, "You can look that over, and if you think there is any equity in what I have said, you can let me know. Call me up and I will come and see you again." I wrote a letter on the 23rd of September, 1906, to D. Gay Stivers, an attorney at Butte, Montana, as follows:

"September 23rd, 1906.

Mr. D. Gay Stivers, Attorney, Butte, Montana:

Enclosed find my proxy 950 shares Parrot Silver & Copper Company, of Butte, Montana, protesting sale of its property to anyone and wish you to so record it at meeting September 28th, 1906.

(Signed)

WILLIAM E. WALL."

The meeting was the meeting of the stockholders of the Parrot Silver & Copper Company at Butte. It was while I was at Butte that I began proceedings under the Montana law.

Cross-examination:

The proceedings instituted at Butte were under the Montana statute for the purpose of enabling me to have the property appraised and receive the appraised value of the property. They were instituted before April 30, 1910, before the conveyance of the Parrot properties to the Anaconda Company. All I can say is that we applied under the statute of Montana to have the property appraised. That was the only recourse we had. The law of the state was a two-thirds vote allowed them to rule, and those who objected
 131 would have to apply under the State law to have their property appraised. I could not say whether or not the two-thirds had assented. That proceeding was dropped. It was not pressed. Steps were taken to institute this pending suit in the winter six months afterwards, November or December, 1910. The bill of complaint had been drafted a month or six weeks before that. I gave it to Mr. Kelly (counsel for defendants) at 42 Broadway, New York. Mr. Foss was a party to it at that time. I spoke to Mr. Foss about bringing this suit when I came back from Montana, or thereabouts, 1910. I was not afforded full facilities for examining all of the books and records that were in the New York office,

but have done that since this suit was commenced as far as I could. I don't think that we have seen everything that pertains to the case. An inspection of the appraisal sheet was refused us, both that of 1904 and the present one. They said it was in the New York office, and then they said it was not. After Mr. Garver went out and talked with them and came back they said it was not there. Mr. Ryan said it was there, and Mr. Thayer said it was there, but after counsel talked with them they couldn't find it. They said it was at the Montana office.

"After Mr. Dunham and I were in New York examining the books and records there I sent an expert accountant from Boston to examine those New York books; I don't know whether the books were placed at his disposal or not; I was not down there; I was there to introduce him and went upstairs where you were. I don't know whether he was given access to the books there; I suppose he was; I never heard that he was refused access."

132 "X Q. What did you say to Mr. Kelley when you showed him that draft of the bill of complaint in this action?

A. I told Mr. Kelley that I had been out to Butte and I had seen the property, and from the way that I had looked over the minutes I thought we were not being treated equitably, and I didn't give Mr. Kelley the bill till we had—until after three hours talking, and he didn't seem inclined to say anything or do anything. I handed him the bill and I gave him a month or six weeks to consider. He thought we were bluffing, he told me I was bluffing, and then we filed the bill.

X Q. What do you mean by doing anything?

A. What?

X Q. What do you mean by doing nothing?

A. Why, I was willing to be taken care of, to be settled with.

X Q. That was it, was it?

A. Why, certainly.

X Q. I like your frankness.

A. What do you suppose we are here for?

X Q. That is what we are supposing; I am glad to see you so frank about it.

A. Why, certainly I am."

133

Deposition of Louis Foss.

My name is Louis Foss. I am one of the complainants in this case, am 62 years of age, live in Brookline, Massachusetts, and am a citizen of Massachusetts. At present my place of business is in Boston. At the time this bill in equity was brought I owned 205 shares of the Parrot Silver & Copper Company and still own them.

My business is wool stock, wool waste. I have been engaged in it for 50 years.

I bought the stock that I own on the following dates, and paid the following prices for them: January 2, 1906, 100 shares at 43½; January 5, 58 shares at 43¾; January 5, 50 shares at 44.

134 *Deposition of Thomas W. Lawson (a Witness for Complainants).*

My name is Thomas W. Lawson. I live in Winchester, Massachusetts. My age is 55. My business is that of an author and occasionally besides I do a brokerage business, banking business, and am a farmer. I have been engaged in the brokerage business since 1870. I knew Mr. Henry H. Rogers quite well. I think I first met him in 1894 or 1895. I met Mr. William Rockefeller about the same time. I knew Mr. Frederick P. Addicks since 1891 or 1892 and I know Mr. Charles D. Burrage and Mr. A. C. Burrage since 1895 and 1896. I had a hand in a general way in the formation and putting together of the Amalgamated Copper Company. I laid the foundation and the getting together of the enterprise, the creation of it. The plans for it before it was created were mine, and I laid them before Mr. Rogers. I was interested more or less with Mr. Rogers and Mr. William Rockefeller in gas properties. I had said from time to time during my association with them in gas affairs that I would call their attention to certain ideas I had of the copper situation and in a general way interested them in the plans I had in mind. I laid before them the general situation of the copper industry. I had been familiar with it and it had been a part of my business from 1870 until the time I speak of in the early or middle nineties, and I stated to Mr. Rogers and perhaps to Mr. Rockefeller that the copper business of metal and mining companies was in a peculiarly good condition for the organization of a large and controlling company; that a company with practically unlimited capital could acquire the good producing companies, acquire
135 ownership, acquire their stocks in whole or a majority of the stocks and could thereby obtain a controlling interest in the going producing companies, and then could put them together under one controlling head in any sort of a legitimate corporation scheme, and that there was a chance to double the capital required to do it, which I stated would be about \$100,000,000. And then I presented to Mr. Rogers and Mr. Rockefeller, from time to time, the details of the different large and middle sized producing companies with my ideas of their possibilities under a plan such as I outlined, and from time to time I presented to them my plans for the corporation that I proposed and in that way got them interested in the general copper situation. That perhaps spreads over two or three years, more or less. I am talking entirely from recollection. Having given no thought to the subject, not knowing anything about this suit, not having read up or thought up in regard to the affair, so that I am talking entirely from the rawest sort of recollection. I should say that that spread over two or three years, and then there came a day when I submitted plans to them in a more concrete form. Those plans called for the purchase of a majority of the stock of a number of the leading companies. The companies that I have in mind are the Boston & Montana, Butte & Boston, Anaconda, and Calumet & Hecla. I should think those were the principal ones at the start. And that finally took the form of an agreement between Mr.

Rogers and Mr. Rockefeller—Mr. A. C. Burrage acting as their counsel—and myself for the purchase of those properties that we could acquire at fair prices, I to have charge of the producing and general control, the general conduct of the formation of the company that it was contemplated forming to own these stocks purchased, Mr. Rogers and Mr. Rockefeller to supply the capital, and Mr. Burrage to look after Mr. Rogers' and Mr. Rockefeller's interests as to details. The purpose was to acquire, so far as we could the control under one head of the best copper producers in the United States. The scheme was not originally confined to the copper mining interests in Butte. I started buying certain stocks for that general account, first the Boston & Montana, and Butte & Boston, and Anaconda, and during the purchasing of those stocks Mr. Rogers started negotiations direct with Mr. Marcus Daly for the purchase of something over a majority of Anaconda and one or two connecting properties, I have forgotten their names now, but properties such as I think Washoe or some of the properties that have been merged in the Anaconda and Amalgamated. The Parrot was not among the first ones. It came in shortly after; that is, as we began to purchase and the press and the public began to talk of the general plans and that they were centering in Butte, we widened the scope of our operations, and there the Parrot came in. My bankers, Brown, Riley & Company, brokers, at that time were, I think, fiscal agents for the Parrot Company or the owners of the Parrot Company; anyway their house was headquarters for the Parrot,—market operations of Parrot,—speaking in a most general way, and they had at that time an option on the whole or a majority, anyway a very large portion of the Parrot stock, an option to purchase it. At the time I speak of, when things became active I learned that Brown, Riley & Company were in a position to trade for a majority or practically all of the Parrot stock, and I do not remember now and I don't know as I was quite sure then just how rigid the option was, but the fact that they had an option and we were in the market for copper properties brought Parrot into our plans in a general way and somewhere there their option ran out without being acted on, for I think our first Parrot purchases were in the open market, that is for the general account that I speak of, and we bought more or less Parrot and negotiated for these large blocks that were represented by some gentlemen in Connecticut, Mr. Farrell, and his associates, and I had more or less negotiations with them; and then as the Parrot part of the enterprise took a more definite shape, I think it was Mr. Burrage and Mr. Rogers who examined the property, or went to Butte to examine it. We purchased a controlling block of stock and at the same time and subsequently, and prior I had been purchasing stock in the market, and we continued to buy in the open market and continued to negotiate for the minority of the stock and the Parrot stock finally went so high that we thought it was not feasible to try to acquire the minority stock. I should say this was just perhaps a year or some time prior to the public formation of the Amalgamated Company. There were agreements between Mr. Rockefeller, Mr. Rogers, Mr. Farrell and myself as to the properties.

We were each to have 25 per cent of the properties of the joint operation. I was connected with them up to and after the floatation, for some time after the floatation of the Amalgamated Company and the purchase of what we called the second section, that is the doubling of the capital, the increasing of the capital from seventy-five millions, where it only took in the Anaconda and its associated companies, and the taking in of the Butte & Montana when the capital was increased from seventy-five to one hundred and fifty-five millions, perhaps a year or two afterwards. Approximately \$46,000,000 or \$47,000,000 were paid for the properties which went in as of a value of \$75,000,000. The portion of it which was paid for my purchases would come from Mr. Rogers and Mr. William G. Rockefeller. We intended in a general way to control the different corporations of which we had purchased stock, and eventually to merge them
138 into the new corporation, sell their properties and liquidate the corporations and disband them; in other words, to make out of the unified whole one large mining enterprise to be run for the benefit of that enterprise and made up of the smaller ownings.

"And to be run for the benefit of the owners, and it was our intention to have the public in the larger corporation all the way through.

Cross-examination :

There was no intention in bringing these properties together to discriminate against the minority stockholders in any of the companies in which the stock was acquired; absolutely none; on the contrary, it was almost the foundation of my plan, and agreed to by Mr. Rogers and Mr. Rockefeller, that there would be no discrimination. The fact that these various properties were acquired upon favorable terms was due to the favorable conditions that existed at that time. It was also part of the scheme, and the Amalgamated at the outset acquired also very valuable timber and coal properties for the operation of these copper mines. There was absolutely no thought, to my knowledge, on my part, or upon that of any of my associates in that, to do anything but bring together a good business proposition in which the public might be legitimately interested."

139 *Deposition of George Forest Bartlett (a Witness for Complainants).*

My name is George Forest Bartlett. I am 62 years old. I live in Dorchester, Massachusetts, and am now out of employment. I was a millwright, and for 30 years had experience in building smelter plants. Butte was my headquarters from 1884 until five years ago, and was my place of residence. During that period I built and assisted in building smelters. I rebuilt the old Parrot smelter and concentrator, and roaster buildings, and that entire smelting plant in Butte. I commenced in June, 1884. I was with the Parrot Company in charge of the construction from that time until 1892. During that period I constructed or reconstructed for them the entire

Butte plant. There was very little of the old plant remaining as the end of that time. It had practically been entirely renovated at a cost of more than half a million dollars I should judge. My best recollection is that it would aggregate some over half a million. There was the smelter, the converter building and the reverberator building and their furnaces; the 200 ton concentrator. We did get it up to 250 tons, and then there were sampling mills and engine rooms and boiler plant. The capacity and efficiency of the plant when I ceased working on it in or about 1892 was between 350 tons and 400 tons a day, in that vicinity.

The plant at that time was considered the most economical running plant in the country.

When I left it was in very good running condition, as good as a mill or smelter is after it is run one year. It compared favorably with other smelters in that locality in equipment, efficiency and capacity.

I had something to do with the smelting plant which the Parrot Company subsequently nearly completed at Gaylord. I think it was about August, or near the first of August, 1897. I was
140 sent for by Mr. Grant and Mr. Shoemaker. Shoemaker was superintendent and Grant was the manager of Parrot. One or the other of them sent for me, and I went down and talked the matter over. They wanted I should go out to the Parrot, or the new Parrot, in Gaylord, as their present man there was not giving satisfaction, and I went. The power-plant was very nearly done, with the exception of the completion of the canal. There was an 18 mile canal that was not completed at that time. The furnace building had been put in. The concentrator building had been put up, and nearly all the machinery in the concentrator had been brought to the building or was, very soon after I went there. There was part of it came after I went there, and part was brought before. Substantially all of it was brought there before I left. We had completed the canal and got the water in. The power house was very nearly ready to put the belts on. The concentrator we had done very little to, the smelter nothing, or practically nothing, in fact what was required when I went there was that a plan should be made to connect the various portions of the plant by some means that we might transfer the ore from the different parts of the works one to the other as required. The plants had not been connected. Each individual building had been designed but without connection in any way, and I was expected to get a general plan out and an estimate of how much it would take to complete that, and do just the work that was absolutely necessary from that time on until we had the plan and the estimate out for the cost of completing the entire plant. That was done, and the report handed in at their annual meeting in the spring. I think it was done in either May or June of 1898 at the meeting of the directors and stockholders of the Parrot company. Very little work was done there after I left it, except
141 there were three watchmen and a man in charge of the store-house. The reason why they did not complete it was not stated to me. I don't know as I would be competent to state exactly why the work was not completed. This much was

stated to me, that they had put in I think it was \$750,000.00 into the plant, and they wanted to know whether it was a feasible plan to complete it. The estimate as I remember it, was something over \$600,000. I think about \$650,000.00; that was the estimate to complete it. As I remember it, the contemplated capacity of that smelter was 1,000 or 1,500 tons in a day. They had water power developed there of, I think, 15 horse power.

I first heard of the Gaylord plant about August 1st, 1897. It had then been in construction something over a year, and I wouldn't say but nearly two. Very little work was done on it after I got there in August, 1897. We completed the canal, and put in the head-gate and the gates at the cross canal and then put in the gates there above the wheel. The distance from the mine was a disadvantage. The Butte smelter I think was about a mile and a quarter, and the Gaylord about 31 or 32, somewhere in that vicinity, and it was over a mountain with a heavy grade. There had been labor troubles in Butte which caused the management to make the change to Gaylord. As far as I know that was the only reason. The construction and operation of the new plant at Gaylord would have necessitated the abandonment of the old plant at Butte, certainly; at least I think that was the intention. When a plant of that kind is abandoned, it is not worth very much, outside of its own use.

There was no necessary reason why the Parrot Company could not have operated both smelters after the Gaylord Smelter had been completed. The Gaylord smelter increased the capacity. It was a question of weighing the advantages against the disadvantages. There was no water power in Butte, and that is undoubtedly one reason why they went to Gaylord.

142 *Deposition of William Rockefeller (a Witness for Complainants).*

My name is William Rockefeller. I am seventy years of age and reside in New York. I have retired from active business. In 1898 and 1899 I knew Mr. Henry H. Rogers and I was associated with him for many years in the oil business. From 1898 to 1900 my son William G. Rockefeller was associated with me in business. I think I first met Albert C. Burrage in 1899 but I do not recall that I had any business relations with him personally or otherwise during that year connected with mines and mining properties in Butte, Montana. I may have met Charles D. Burrage of Boston in 1898 or 1899 but I do not remember whether I did or not. I had no relations with him during those years connected with mines or mining properties in Butte. I think I first met Marcus Daly of Butte in 1899. I do not remember that I had any business relations or transactions with him during 1898 or 1899 connected with mines or mining properties at Butte. I think I first met Frederick P. Addicks in 1899. I do not recollect whether during those same years I had any business relations or transactions with him in connection with mines or mining properties in Butte. In the winter of 1898 and 1899 I was informed generally about the copper properties at Butte

by Mr. Rogers and during the same winter I expressed to him my willingness to become interested in copper mining properties there. My conclusion was based entirely upon the opinion of Mr. Rogers. I am and have been a director and stock-holder of the Amalgamated Copper Company and of the Anaconda Company but I have never been an officer of either company. I was never a di-

143 rector of any of the other subsidiary companies and I do not recall that I ever owned any of the stock of those companies. My first information as to the Anaconda Copper Mining Company and the Parrot Silver and Copper Company and their respective physical properties, came from Mr. Rogers in the winter of 1898 and 1899. They were merely oral statements expressing generally his opinion as to the value of the properties as an entirety. I do not remember ever to have had a conversation with Albert C. Burage concerning the purchase of a controlling interest in the Parrot Silver and Copper Company from Franklin Farrell and others of Connecticut. I do not know the price per share that was paid for the purchase of a controlling interest in the Parrot Company to Franklin Farrell and others. I probably furnished some of the money which paid for these shares but I do not recall the particulars. I do not recall by whom it was paid or when or the amount.

144 *Deposition of Jared E. Gaylord (a Witness for Complainants).*

My name is Jared E. Gaylord. I live in Bridgeport, Connecticut. My age is sixty-eight and I am not in active business. I first knew of the Parrot Silver & Copper Company in 1883, in which year I became General Manager and Secretary and Treasurer of the Company; I believe it was in July. I held those offices until July, 1896. Afterwards I retained no connection with the company but remained a stock-holder until January of this year (1912). I resided at Butte from 1883 until July, 1896. I first went there as General Manager. Thomas Wallace was then President of the Parrot Company. Mr. Wallace was succeeded by Franklin Farrell. My duties were managing, looking after the operations of the company, which work I attended to principally myself.

When I took hold the company had been running for some time; I can't say how long. They were running in a small way, had been under great difficulties and were starting like all new enterprises. Their furnaces were small, as large as furnaces generally in that line of business I think. They were not financially strong. Generally the business was not paying, at least I would say that some months they might have made money, other months they would lose. They had a concentrator there for concentrating the ore, calciners for roasting the ores, three or four reverberatory furnaces and engines for running their machinery. They were working only one main shaft at that time.

Q Now will you be good enough to tell us as specifically as you can the history of the Parrot Company and the Parrot mines during your administration.

145 A. In the prosecution of the business, changes and improvements were made, increase of number of furnaces, increase of size of furnaces, erection of blast furnaces, the installation of *manches* converters for the treatment of copper matte, the deepening or sinking of the shaft on the Parrot claims and the installation of a larger hoist.

The concentrator was very much enlarged and that involved a great deal of additional machinery and so on. The company had a smelter at Butte when I took charge of it. When I went there the capacity of the reverberatory furnace was from seven to nine tons a day and when I left we were putting there a reverberatory with a capacity of from fifteen to twenty tons a day. In 1896 there were four or five reverberatory furnaces and two blast furnaces. In 1896 they were working substantially to their full capacity. At the time I left there in 1896 there were other smelters being erected by the Parrot in the Jefferson Valley. This work was begun about 1894. The intended capacity was to treat about a thousand tons of ore a day. It was intended to take the place eventually of the smelting plant in Butte. When I left in 1896 most of the buildings had been erected, the installation of converters, blowers, part completion of the water plant, installing machinery in the concentrator, erection of roasting furnaces and no end of machinery and appliances to carry out the general idea of erection of a smelting plant. At the time I left in 1896 most of this was on the ground, some of it was ordered and some in transportation. I think it could have been got in operation the next year. Connected with that plant the company had secured about 6,000 acres of land, I think. This was bought by me. The cost of the land might have been \$25,000 or \$30,000. That is my best recollection. The buildings were mostly of iron and steel construction. There was a smelting building of I think about 300 ft. by 60 ft., a concentrator of about 200 feet by 100 feet, a calcining building of about 100 by 125; a machine shop 35 feet by 100 feet, a carpenter shop 50 feet by 30 feet and an office building 30 feet by 40 feet. There were also some small buildings such as boarding houses and houses for the lodging of men but there were very few of those. I think we had expended somewhere in the neighborhood of \$250,000 to \$300,000 on the plant. We made a ditch or canal for carrying water at a cost of something over \$50,000 and had a horse power of about 1,500 from the Jefferson River. The plant was between 25 and 30 miles from Butte with access by the Northern Pacific Railroad. The plant was adjacent to the location of the railroad. We had spur tracks into the works.

While I was in Butte I think there was more than \$750,000 spent in permanent improvements and changes in the Butte plant, and during my administration there was expended for improvements and additions at both Butte and Parrot from \$800,000 to \$1,000,000 in all. These expenses were all paid out of the earnings of the mines and after paying them, dividends of one-half of one per cent a month and one per cent a month were paid. During my management the dividends increased. We began to pay dividends perhaps

three or four years after I took hold. The property at Parrot which I have described was sometimes known as the Gaylord Plant.

The peculiar advantages incident to and attached to that plant at Parrot, or Gaylord, its location and physical advantages were its water power, larger, more modern furnaces, sufficient land to conduct the operations to advantage and generally to conduct the business in a more economical manner.

I was familiar with the locality and in my judgment
147 there was no other place in the vicinity so well adapted as that was for the needs of the mines for smelting purposes. Three or four years after I left Butte I saw the Jefferson plant again (meaning the Parrot and Gaylord plant above referred to). My recollection is that then most of the buildings if not all were standing but considerable of the machinery had been removed.

While I was in charge of the Butte property we sent black copper for refining to the Bridgeport Copper Company, the control of the stock of which was owned by the Parrot Company; I think all but three shares of the entire capital. We sent from 750,000 pounds a month to a million and a half pounds a month beginning about five years after I took charge, or possibly six.

When I resigned as Treasurer there was in the neighborhood of \$2,000,000 in the treasury, and in my judgment there was copper ore available for some time to come.

"The two million dollars covered the bills receivable and copper on hand and money in bank; three or four hundred thousand dollars of the two million dollars was cash on deposit, or in hand. I have no recollection of any higher dividend than one per cent a month being paid by the Parrot Company. When I was there, the first dividends that were paid were one-half per cent a month, and subsequently they were increased to one per cent a month. After two or three months, at any rate a short time, between '85 and '90, the mines did not pay because of the low price of copper."

Cross-examination:

The Bridgeport Refinery was one of the oldest electrolytic copper refineries. The old Butte smelter was about three-quarters of a mile in a direct line from the Parrot mines down grade. The new smelter was over a mountain where there was a very heavy grade against the load.

148 Redirect examination:

(By Mr. French:)

Q. Mr. Gaylord, you have stated on cross examination in answer to one of Mr. Garver's inquiries that on the railroad between Butte and the new plant in Jefferson (Gaylord) there was a heavy grade against the load. Taking the situation as a whole were the advantages of the Jefferson (Gaylord) location in excess of the disadvantages in your opinion.

A. It was thought the advantages were greater than the disadvantages. The result as a whole would be economy.

149 *Deposition of Thomas Wallace, Jr. (a Witness for Complainants.)*

My name is Thomas Wallace, Junior. I live in New Haven, Connecticut, and am fifty-one years of age. My business is President of the Ansonia Electrical Company, New Haven, Connecticut. I am a son of Mr. Thomas Wallace who was at one time president of the Parrot Silver & Copper Company. I had some personal knowledge concerning the sale and purchase of stock of the Parrot Company in 1899; approximately a majority of the shares; a little more than a majority as I remember; it was over 115,000 shares. I simply notified the people who had stock that if they deposited it at a certain place they would get their money for it. The place was the Colonial Trust Company New York. This was some time early in 1899. I notified all the stock-holders whose names I could obtain as I recollect it. As I remember it now, I don't think all. I think I simply notified Mr. Farrell and he notified the rest. I gave an option on some of this stock and delivered it about two or three months before the transfer, I should say, to A. C. Burrage of Boston. This was at the Colonial Trust Company in New York. At that time Franklin Farrell, Rutherford Trowbridge and Robert D. Grant were also present and there was a Miss Harrison whom I think someone said was Mr. Rogers' private secretary. \$40 a share was paid for the stock. C. D. Burrage was there also. The option ran to two parties, Richard D. Somebody and somebody else. I do not know who the actual purchasers were. "Richard D. Willard" sounds familiar. All that I remember about the option is that we were to sell this stock for not less than \$40 a share.

150 *Deposition of Charles H. Pine (a Witness for Complainants.)*

My name is Charles H. Pine. I live in Ansonia, Connecticut. I am sixty-seven years of age and am President of the Ansonia National Bank. I was interested in and connected with the Bridgeport Copper Company at its inception in 1885, I think. Ultimately we had a capital of \$100,000 all paid in. I left the Bridgeport Company about June 1891 but remained a stockholder until the exchange of stock with the Parrot Silver & Copper Company which I should say was in the fall of 1892. The exchange was on the basis of four to one; four of the Parrot Company for one of the Bridgeport Company. The Bridgeport plant consisted of a refinery building, another building that contained vats for the electrolytic process and subsequently there was a rolling mill put in for rolling copper plates. At the time I left it in 1891 it was a going concern and it also was at the time the stock was exchanged. In 1887 we paid a dividend of ten per cent, in 1888 the same, and after that we increased the dividends. A part of the time afterwards I think we paid five per cent quarterly. When I severed my connection with it it was doing a nice and prosperous business, well

equipped for the purposes for which it was intended. I was Treasurer of the Parrot Company from 1885 to the summer of 1891.

151 *Deposition of Andrew Grafius (a Witness for Complainants).*

My name is Andrew B. Grafius. My age is thirty-eight. I live in New York City. My occupation is that of treasurer. I have been connected with the Parrot Silver & Copper Company since the fall of 1906,—first as bookkeeper and director. I held five shares of the stock, I think, and have never held any more. While I was director Messrs. Addicks, Jones, Ryan and Judson were my fellow directors. I have never been in Butte and know nothing about the Bridgeport property. I was vice-president of the Anaconda Company in 1908 or 1909. I was assistant secretary of the Butte Coalition in 1906, 1907 or 1908 and was vice-president of the Amalgamated Company for some years beginning with 1907 or 1908. I was a director of the Boston & Montana Copper Company for awhile; I don't recall when. The stock of the Parrot Company in my name was not my stock, and I endorsed the dividend checks in blank and delivered them, I presume, to one of the officers of the company, Mr. Addicks, I presume. He was president of the company.

(Witness produces check book on the Central Trust Company and the National Copper Bank both of New York beginning with check No. 20 of the Central Trust Company, dated December 18, 1906 and current check book ending with check No. 106 dated March 11, 1912 on the Mechanics and Metals National Bank; also two pass books, one on the Central Trust Company of New York beginning on November 12, 1906 and ending on August 4, 1909 and the other on the Mechanics and Metals National Bank beginning February 5, 1910, the last item being March 1, 1912.

Witness states he was unable to find pass book of the
152 National Copper Bank.

Witness is shown Parrot Company's check stubs to the order of the Anaconda Copper Mining Company as follows:

Feb. 21, 1907.....	\$4,666.15
March 30, 1907.....	12,666.14
April 15, 1907.....	3,822.19
May 15, 1907.....	5,242.96
June 15, 1907.....	6,757.54
August 19, 1907.....	5,585.31
Sept. 18, 1907.....	5,137.80
Oct. 14, 1907.....	4,310.37
Nov. 18, 1907.....	2,940.39
Dec. 16, 1907.....	2,593.63
Jan. 17, 1908.....	1,554.07
Mar. 16, 1908.....	743.45
April 17, 1908.....	679.86
May 19, 1908.....	4,170.51
July 22, 1908.....	6,406.66
Sept. 16, 1908.....	7,527.81

Oct. 14, 1908.....	9,090.39
Nov. 14, 1908.....	10,298.32
Dec. 15, 1908.....	7,912.73
March 27, 1909.....	8,503.35
April 27, 1909.....	15,127.19
May 25, 1909.....	8,806.57

and numerous checks made to B. B. Thayer on account of Anaconda, Mr. Thayer being President of the Anaconda Copper Mining Company and a director of the company:

July 28, 1909 to Anaconda.....	\$8,929.77
August 17, 1909.....	7,074.09
September 27, 1909.....	7,639.30
153 October 20, 1909.....	8,612.98
November 13, 1909.....	7,412.89
December 28, 1909.....	7,688.84
January 27, 1910.....	4,891.01
February 14, 1910.....	3,044.90
March 14, 1910.....	2,909.94
May 2, 1910.....	5,966.85
May 16, 1910.....	2,610.12

As to all of the foregoing checks the witness stated that he knew they were given in payment of drafts but for what he did not know.

Witness produces certain dividend checks of the Parrot Silver & Copper Company. The first dividend paid from the New York office was in December 1906. Witness produces all the dividend checks from that time down to the present. Witness's attention is called to one of the checks dated New York, December 12, 1906 on Central Trust Company to the order of William G. Rockefeller for \$28,929.75 signed by the Parrot Silver & Copper Company by F. P. Addicks, treasurer and endorsed "William G. Rockefeller, Pay to the order of the National City Bank, Amalgamated Copper Company by F. P. Addicks, Treasurer."

Witness was shown another check of the Parrot Company dated March 12, 1907 to the order of William G. Rockefeller for \$28,292.75 which witness said he believed to be a dividend check. This check bore the endorsement "William G. Rockefeller, Pay to the order of National City Bank, Amalgamated Copper Company by A. H. Melin, Treasurer." Witness calculated that this represents dividend on 115,719 shares. Witness is shown check of June 19, 1907 drawn by the Parrot Company to the order of William G. Rockefeller for \$28,929.75 endorsed, "Pay to the order of Standard Oil Company of New York William G. Rockefeller by P. J. McIntosh."

154 Witness is also shown dividend check of the Parrot Company dated September 18, 1907 to the order of William G. Rockefeller for \$28,929.75, endorsed, "William G. Rockefeller Pay to the order of the National City Bank, Amalgamated Copper Company, by A. H. Melin, treasurer."

Also another dividend check dated September 26, 1910 to the order of William G. Rockefeller for \$16500, endorsed "William G. Rockefeller, Pay to the order of National City Bank, Amalgamated Copper Company, A. H. Melin, treasurer."

Witness testified that this last check represented dividends on 110,000 shares.

He is shown also a dividend check dated September 26, 1910 to the order of Fred P. Addicks for \$945, endorsed "Frederick P. Addicks, Pay to the order of National City Bank, Amalgamated Copper Company by A. H. Melin, treasurer." This represented dividends on 300 shares.

Witness was shown dividend check dated August 28, 1911 to order of William G. Rockefeller for \$16,500 which he says appears to be dividend check of Parrot Company and is endorsed "Pay to the order of Amalgamated Copper Company, William G. Rockefeller."

Witness is shown another dividend check dated November 27, 1911 to the order of Amalgamated Copper Company for \$945 endorsed "Pay to the order of United States Trust Company, Amalgamated Copper Company by A. H. Melin, treasurer."

Witness is shown another dividend check dated November 27, 1911 to the order of William G. Rockefeller for \$16,500 which he says appears to be dividend check of the Parrot Silver & Copper Company. This check was endorsed, "William G. Rockefeller, Pay to the order of the United States Trust Company, Amalgamated Copper Company by A. H. Melin, Treasurer."

155 *Deposition of John D. Ryan (Taken on Behalf of Complainants).*

My name is John D. Ryan. I am forty-seven years of age and live in Butte, Montana. My places of business are in Montana and at 42 Broadway, New York. I am president of the Amalgamated Copper Company and director of the Anaconda Copper Mining Company and of the Parrot Silver & Copper Company. I was a director of the Boston & Montana Company from 1904 until the company was dissolved; was during the same time director, until it was dissolved, of the Butte & Boston Consolidated, and the Trenton Mining and Development Company. I was a director of the Washoe Copper Company from 1904, and of the Big Blackfoot Milling Company since 1904. I am president and director of the Diamond Coal & Coke Company. I was a director of the Butte Coalition Mining Company until it was dissolved. I have been a director of the Parrot Company since 1904. I knew Henry H. Rogers rather intimately. It was as a result of negotiations with him that I became connected with the Parrot Company. I have been President of the Amalgamated since 1909 when I succeeded Mr. Rogers, being elected to fill the vacancy caused by his death. The Amalgamated Company owns a controlling interest or a majority of the stock in all of the companies in which I have testified in which

I am a director and all the stock of some of them. It owned all the stock of the Trenton Mining & Development Company, Washoe Copper Company, Diamond Coal & Coke Company, the Big Blackfoot Milling Company and still owns all the stock of those companies that are in existence. It owned a majority of the stock of the Anaconda Copper Company, Boston & Montana Consolidated, Butte & Boston Consolidated and the Parrot Silver & Copper Company. The Red Metal Company is a subsidiary of the Butte Coalition. The Butte Coalition Company owns all of the stock of the Red Metal Company. The Amalgamated Company owned 50,000 shares out of a total of a million shares of the Butte Coalition Company.

156 I am President and Director of the United Metals Selling Company of which the Amalgamated owns all the stock except sufficient to qualify directors. It was bought by the Amalgamated in March, 1911. One hundred shares of the Parrot Silver & Copper Company stand in my name but I am not prepared to say whether they belong to me or not. That number of shares has stood in my name from the beginning of my connection with the company; I cannot tell you whether I personally own that stock without referring to my books; that is, I know I bought the stock and paid for it; whether I have it in my own right or whether it is pledged as collateral, I don't know; the dividends are paid to me. From 1904 down to the present time I have been manager of the Parrot until I should say a year ago when Mr. Gallwey was elected manager. From 1904 to 1909, I think, I practically directed the operations of the Parrot Company. The Anaconda and Parrot claims join and are more or less analogous and pretty well mixed up together. I do not think it is true that for a considerable time prior to the transfer of the Parrot to the Anaconda a large part of the Parrot ore was taken out through the Anaconda shaft, except at such times when the Parrot shaft was not in condition to operate. I don't remember any particular time. It is physically possible if the connections were made to the shaft of the other companies to take out all the ores from the Parrot Company through the shafts of some other company. Pains were always taken to keep them separate and apart.

(Witness is shown paper put in evidence as Plaintiffs' Exhibit 12 being a report or statement of the Amalgamated Copper Company to the New York Stock Exchange Listing Committee, dated February 14, 1910, signed by the witness.) I was familiar with the contents of this paper when I signed it, and as far as I
157 know they were true.

When I was in charge at Butte and during all the time I have been connected with the Parrot Company I principally conferred as to its policy with the general manager of the Company, Mr. Gallwey, with Mr. Sidney Chase, Mr. Addicks, Mr. B. B. Thayer and, in his life time, with Mr. H. H. Rogers, and with Mr. Melin. I did not know that Mr. William G. Rockefeller was the largest stockholder of the Parrot Company. My recollection is that he

held stock in his name belonging to the Amalgamated Copper Company.

The relation of the Anaconda Company to the Parrot Company, prior to 1910, was that the Anaconda Company leased the smelter at which the Parrot ores were treated from the Washoe Company and conducted it and treated the ores of the Parrot Company and outside of that, their relations were entirely independent; the operations were entirely independent. The other ores treated at the smelter were the ores of all of the companies operating in Butte with which I was connected, and custom ores that were bought by

by some of the companies for treatment. The Anaconda and
158 Parrot claims join and are more or less contiguous. I think there was ore being taken out of the Parrot shaft until very near the time of the transfer, about the time of the transfer; the Parrot shaft was in very bad repair and it was unsafe to operate it; the ground was very treacherous; it gave us a great deal of trouble, and it was at such times that we did not use the shaft,—did not extract ore from it. I don't think it is true that for a considerable time prior to the transfer a large part of the Parrot ore was taken out through the Anaconda shaft; I don't think so, except at such times as the Parrot shaft was not in condition to operate. I don't recall any particular times when the Parrot ore was taken out through the Anaconda shaft; I don't recall, but I will state that my recollection is that in the case of the Parrot and other of the companies, when it was unsafe to operate their shafts, rather than to discontinue the production entirely, we took ore out from the shaft of adjoining claims or nearby claims owned by the company. In the case of the Parrot Company we extracted a good deal of ore for a considerable length of time through the shaft of the Washoe Company, and this could not be done at anything like a reasonable cost from the Parrot shaft, and the only way that it could be recovered with any reasonable uses of property at all was by taking it through the main line shaft from which the workings extended up to and into the Bellona claim. During the greater part of my administration the Bellona ores, as I say, were mined through the main line shaft of the Washoe Company, but not the ores of the Parrot claim or the Parrot mine property, as we called the Parrot. I don't know that there were any ores of the Parrot

Company taken out through the Never Sweat shaft of Ana-
159 conda shaft; if the ores were taken through any shaft or any other company, then the company that handled the ores, always kept a record, and the ores were segregated and kept track of separately. I know that the records were always kept very carefully; there is very little chance for a mistake; it is just as easy to keep a record of ores from one mine going through any company's shaft, as it would be to keep shipments separated on a railroad. Even if there should be any motive for confusing them, it would not be an easy thing to do under those circumstances; it would be a thing that I am satisfied that no one connected with the management of either company could afford to do, because the knowledge would be generally mutual; you cannot extract ores

from any mine through another shaft, without 50 or 100 men knowing whether you are keeping track of it or not. In sending Anaconda and Parrot ores to the smelter it was not the custom to mingle them at all; pains were always taken to keep them separate and apart; there was a practice of sampling all of the ores of the different properties from the different districts, and mingling them in the smelting operation; the charge is made of ore of all kinds of limestone and flux, but until the ore reaches the smelter or the concentrator they are not mingled; they are kept separate and sampled and assayed as they are in any smelting plant that treats the ore of more than one company; that is the practice in every custom smelter where ore is purchased; when I answered that the ores were not mingled, I meant, of course, that they were not mingled until they had been sampled and assayed and practically valued. Where the ores of various mining companies are all sent to the same smelter and the mining companies and the smelter
160 are under or controlled by the same interests, it would not be a very easy matter to manipulate the proportion, not without the collusion of a great many people. At the time I first became acquainted with the Parrot Company, in 1904, the physical properties of that company were the mines and an abandoned concentrator and smelter at Butte and an unfinished and abandoned plant at Gaylord; I think they also owned a dismantled plant, or the stock of the company owning a refining plant at Bridgeport, the Bridgeport Copper Company. At that time the work upon the reduction plant at Gaylord had been discontinued some years before, and the plant was abandoned, not in use. The reduction plant or smelter at Butte was in a tumbled down partially dismantled condition; I think most of it was there, but not worth anything except for scrap. The property at Gaylord during my administration was leased, part of it, as grazing land, and in 1907 or '8 it was sold to the Butte Electric & Power Company, or the Madison River Power Company, a subsidiary of the Butte Electric Company for \$100,000.00. I was not connected with the Butte Electric & Power Company at that time. I am now as a director and stockholder; I became a stockholder in 1909. I was not connected with the Madison River Power Company at that time, and have not since become connected with it except as I am a director of the Butte Electric & Power Company. The Parrot Company had been endeavoring for a long time to dispose of the property, and an offer was made to purchase by a man in Helena for \$40,000.00, which had been recommended by the manager of the company for acceptance; I refused to accept it, and in a trade with the Butte Electric people I got \$100,000.00 for the property. That sale included the water right, and there
161 was a small water power there that was not of very much use. The payment was made in cash. The Butte Electric & Power Company is not using the water power there at the present time; I believe they have not used it for over a year. I do not remember that any other property of the Parrot Company was disposed of during my administration, prior to 1910, excepting some conveyances that we made to prevent litigation between the com-

panies over ore bodies and over mining territory; there were some conveyances made for that purpose. When I first went there the Parrot ore was refined at either the Baltimore refinery or the Raritan refinery: we had contracts for our different companies with the Baltimore Company that expired about the time I took charge of the operations; after these contracts expired, the refining was all done at the Raritan Copper works. The Raritan copper works were at or near Perth Amboy, New Jersey; I was not connected with that company at that time. Last year, or two years ago last December, the International Smelting & Refining Company bought the Raritan works, and I am a stockholder and director of the International Company.

My recollection is that Mr. Rockefeller held stock in the Parrot Company in his name belonging to the Amalgamated Copper Company. The Amalgamated had possession of the stock. The arrangement is that the Amalgamated owns the stock, and has possession of it, and has simply not transferred the certificates from Mr. Rockefeller's name; I don't suppose it was considered necessary. At the time that I originally became connected with these companies, the Amalgamated Company owned almost exactly fifty-one percent

162 of the Parrot Company, and exactly fifty-one percent of the capital stock of the Anaconda Company. Its relative interest in those two companies was identical. There could not

have been any benefit in discriminating in favor of one company as against the other. As a matter of fact there was not the slightest discrimination against the Parrot Company in favor of the Anaconda Company. The Parrot Company was favored on every side where we could, because it was a 'lame duck', and we were helping it along all the time; that is true also so far as the Parrot Company had any relation with any other companies in the Butte District, in which the Amalgamated Copper Company was interested. So far as I know there was no discrimination exercised by the Amalgamated Company or the officers of that company, against the Parrot Company, in any of its operations, of any kind. As far as I could, and had the ability to do so, I managed the operations of the Parrot Company to the best of my ability and to the best interest of all the stockholders of that company. The ores of the Parrot Company that were treated at the Anaconda smelter were never mingled and are never mingled until they are sampled, and after they have been sampled, all ores are put together and treated alike; it is necessary for the smelting operations that we should have the benefit of the mixtures, of the flux that is in one ore to help treat the other. That is the universal method of smelting all the world over. The Parrot Company got the benefit of every pound of ore that it contributed to those smelters. The Parrot Company got out in metals its full proportion of the savings made at the reduction works from the ores of all the mines treated, and the Parrot ores were treated in precisely the same manner as every other producer that shipped ore to that smelter. The Anaconda Company leased the smelter,

163 and treated the ores of all of the other companies in which the Amalgamated had a controlling interest on the same

basis, precisely, as it treated its own; that is, returned the same savings, and charged the actual costs; and in all cases the cost of operations and the savings were computed month by month, and at the end of six months, and at the end of every year the actual savings were ascertained by inventory of the metal in process and the ores on hand, and the actual final adjustment and return was made alike to all companies, and the charge was made to cover the cost of operations alike to all companies on the basis of the tonnage received from each. The charge was five percent on the cost of the smelter and a depreciation charge. Those two items entered into the cost of operation; they were based on the actual cost of the smelter. The ore haul to the site of the Gaylord plant would be much more expensive than the haul to the Washoe plant at Anaconda. The Washoe smelter at Anaconda is the largest copper smelter in the world, and as near as can be determined from any published data, considering the cost of fuel, its operation is the cheapest in the world; and its savings, as far as smelting operations go, are the highest known of in copper metallurgy. Since my connection with the Parrot Company it has been getting its ores treated at the best rates available in that district. The Butte ore is very refractory. The ore contains a very large amount of silicon, needs a great deal of flux, lime or iron, to make the smelting mixture; but the costs charged the Parrot Company, and all of the other companies which delivered ore from Butte, were very much less than the costs of any independent smelting operation that has ever been conducted in the Butte District. The Parrot Company got 164 the benefit of all that, and the cost of the operation was very much less per ton, in dollars and cents, than the cost of any independent smelting or concentrating operation in the Butte District, and the Parrot Company got the benefit of that. I mean to say that the savings in metal values have been very much better than have ever been made in the Butte District. At least four or five percent in concentrating, and at least three or four percent in smelting. I visited the old smelter at Butte of the Parrot Company during the week of my first election as a director of the company,— of the Parrot Company. I had been familiar generally with it prior to that time, and had been there a number of times; I was through it after my election as a director to determine what ought to be done with it. Its machinery at that time was generally tumbled down; the machinery was nearly all there; the roof was practically all gone, corroded and eaten out; general disorder and bad repair; out of date; inefficient, a scrap heap. A new smelter could have been erected there, but what was more necessary was a new concentrator; there was not sufficient room for treating the tailings; to make that clear, the old plant had filled up and occupied the ground that was available for the storage of tailings, and there was no more space available. The new plant that was started at Gaylord was located at the foot of a mountain in the Jefferson valley, quite a fertile valley. In the past few years there has been a great deal of litigation in the west, involving also the smelters in the Butte district, in regard to complaints of farmers. In case the smelter at

Gaylord had been completed, the effect on the farming land would have depended on what means were taken to eliminate sulphur from the fumes; it would be a very expensive plant if the fumes were carried far enough away to save damaging the lands that immediately surrounded the plant. They would have to build flues and stack to reach a point very much higher than they had, near the plant, to carry the fumes off and save damage. In my judgment it would cost the Parrot Company a great deal more in its smelting operations if it had completed the Gaylord plant than if it had availed itself of the Anaconda plant.

In refining the product of the Parrot Company, it paid exactly the same as the Anaconda Company. The Boston & Montana Company had a contract with the Raritan Copper Works that was running before the Anaconda contract was made; it was a higher toll for refining; a higher toll than the Parrot and Anaconda. The amount paid by the Parrot Company and Anaconda Company for refining was probably the lowest rate paid at that time by any copper producing companies in this country, and the tendency has been for the rate to fall slightly—some. The copper of the Parrot Company has been sold through the United Metals Selling Company. The Amalgamated Copper Company had no interest in the United Metals Selling Company at all until 1911, and I had no connection whatever with the United Metals Selling Company until 1911. When I first became connected with the companies they were paying one and one-half percent commissions, for the selling of the copper and the guaranteeing of the accounts. That is, once the sale was reported to the mining company, the United Metals Selling Company was held for the full amount of the sale, less its own commission, and no expenses in the way of freight or lighterage. The accounts were all guaranteed, and the expense of one and one-half percent covered them all. Upon negotiations, in which I had part, the rate was reduced a short time after that to one percent, and that has been the rate, and that is the rate now for all of the companies. In connection with all of the sales made of the copper of the Parrot Company, since I have been connected with it, that company has received precisely the same treatment as the Anaconda Company, and the rates obtained by those two companies were as favorable as given to the other companies. The United Metals Selling Company was not the agent merely for copper companies in which the Amalgamated had an interest; it was selling agent for a number of other companies, a number of companies in the Lake Superior district, and at least one large producer in Arizona, and Mexican mining companies, and it did a general selling business.

The Amalgamated Company now owns all of the Parrot stock with the exception of about 7,500 shares, about 6,500 shares, or somewhere around that, between 6,500 and 7,000, and that includes the 1,200 shares that are owned by the complainants in this action; excluding the stock owned by these complainants, the Amalgamated owns all but about 5,500 shares, less than 2½ percent of the capital stock of the Parrot Company. So far as I know the holders of that

5,500 shares have made no complaints of the sale of the Parrot Company to the Anaconda Company in 1910, and no other action has been commenced by any of the other stockholders. So far as I know these two complainants, who represent about one-half of one percent of the capital stock, are the only complainants. Up to the time of the conveyance of the Parrot property to the Anaconda in 1910, the Amalgamated Company had only this 51 percent. controlling interest that I have referred to.

167 Redirect examination:

There was a tailings dump at the old smelting plant of the old Parrot Company. About the time I went there the officers of the company had been negotiating to sell it to some people who were going to put up a plant, and had about concluded to sell at about ten cents per ton of tailings. I refused to carry out the bargain, and recovered, first and last, something like forty and fifty cents a ton on tailings; and the dump is still there and probably has a little more value. I think the tailings have been pretty well leached, and the values have been pretty well extracted. As far as profitable we extracted all the values that we could from the tailings on the dump.

The sale of that property at Gaylord including the water-right for \$100,000.00, was a full and fair value for that property. I think it was a very good price for it; we had been negotiating for three years to sell the property, and had men looking at it with a view to sample it out in small lots for agricultural uses. The best offer that we had been able to obtain was \$40,000.00, and I opened negotiations with the Butte Electric & Power Company, and told them that there was some water power there,—I did not know how much,—but I thought that we would probably develop, if we could not do anything else with it, and we would try to work it out, and they bought it in that belief. Their chief engineer had an idea that there was a hot spring near the ditch leading to the site where the power was to be developed, that he thought could be brought into the ditch, and keep it open the year around. As a matter of fact they have never been able to operate it the year round; the Butte Company has operated it at a serious loss, until a year or so ago; and they closed it, and they have not done anything with it since.

168 The water was frozen at least three months during the winter, since the water power has been developed; it could not be used at all during that time, and that is the time it is needed, because at every other time in the year water power is more plentiful.

In connection with the sale of the Parrot properties and the properties of the other companies to the Anaconda, I personally examined the reports of the appraisers, and considered them with reference to ascertaining whether they were fair and reasonable. In my judgment the amount paid for the Parrot properties represents a fair and reasonable value for the properties; I consider that the Parrot Company has been treated very liberally."

21. Also add to the statement of appellants, and the portions of the record to be included, the following portions in narrative form,

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of the deposition of John D. Ryan, sworn on behalf of the defendants, viz:

"Deposition of JOHN D. RYAN, taken on behalf of the defendants.

Direct examination:

The ownership of the Amalgamated in the Anaconda Company and the Parrot were exactly in the same proportion, and anything that was done to benefit or harm either of the two companies would benefit or harm the Amalgamated; in other words, it was not possible for the Amalgamated Company, the holder of the majority of the stock of the Anaconda Company, to profit by a discrimination against the minority stockholders of the Parrot Company. So far as I know, during the time I was familiar with the management of

the Parrot Company, and down to the date of the sale of
169 this property to the Anaconda Company, there was not the slightest discrimination shown against the Parrot Company in favor of the Anaconda Company or any one else. As a matter of fact, in all of the relations between companies, I think that there was more care exercised to see that the Parrot Company got what it was entitled to and got good measure, than there was exercised in the case of the other companies, because the Parrot Company got more help and needed everything we could give it more than any of the other companies, and the interests of the Parrot Company were always watched very carefully in any business it had to do or any relations it had with either the companies the Amalgamated were interested in or outside companies or individuals. So far as I had anything to do with the management of the operations of the Parrot Company, to the best of my ability I conducted all of its operations in the interests of all of the stockholders of the company.

The Gaylord plant of the Parrot Company was located practically on the level of the valley in which there was a good deal of farming land and a good deal of farming and stock raising and when the plant in operation should give off fumes at this level, they would have been given off there, there undoubtedly would have been considerable damage to the farming land. I have been through that valley at different times. In my judgment the cost of smelting ores of the Parrot Company would have been at least \$1.50 a ton more to treat the ores produced in Butte at a plant of the size of the proposed Gaylord plant as it was started, or any plant of a capacity of less than 5,000 tons a day, than the costs have been at the Washoe smelter. The estimated capacity of the Gaylord plant was
about 800 tons of concentrating ore. At the Washoe smelter

170 the Parrot Company paid exactly the same to have its ores treated as all the companies in which the Amalgamated Company had the controlling interest; the costs of the smelter were charged evenly and equally per ton of ore against the ores from all of the companies that the Amalgamated controlled. The savings were calculated, preliminary settlements were made on the basis of 95 per cent of the estimated savings, and at the end of six months periods the completed inventories of the copper and precious metals and the ores in process, and the actual savings for the period were

made so that the Parrot Company and all of the other companies which the Amalgamated controlled made a final adjustment and settlement for the period, paying the actual cost for the treatment of ore and receiving the actual savings of the metals contained in them. Since the time when I became a director of the Parrot Company the price paid for refining the copper of the defendant company was under \$16.00 a ton, from the time the copper was refined at the Raritan Copper Works. Previous to that time it had been refined at the Baltimore Refinery, and the contract with the Raritan Copper Works was made at a considerable reduction from the Baltimore price. I have not got that price in mind now but it was something under \$16.00 per ton, with a return of all of the metals instead of a return of only part of the metals as under the Baltimore contract. The Parrot Company paid the same price and on the same basis precisely, as the Anaconda Company, the Washoe Company and several others, and it had a lower price than the Boston & Montana Company, because the Boston & Montana Company did not give all of its refining business to the Raritan Copper Works. These rates paid

171 by the Parrot Company for refining its copper at the Raritan Copper Works were, as far as I know, the lowest rates paid anywhere for refining copper. I would like to explain that the rate for refining copper cannot be compared by taking only the refining charge; the refineries in some cases returned 98 per cent silver and in other cases 100 per cent silver and on bullion that runs high in silver and gold the charge might be less per ton for refining, but on a return of anything less than all of the metals it would show so much higher cost to the ton to the producing company. The refined copper of the Parrot Company was sold through the United Metals Selling Company.

In my former examination I testified that the Amalgamated Company owned all the capital stock of the Parrot Company with the exception of about 6500 shares; since that testimony, and on the 30th day of January of this year there were 3909 shares outstanding outside of the stock owned by the Amalgamated Company, and that included the 1200 shares owned by the complainants in this action. No other suit than that commenced by the complainants herein has been commenced by the holders of any of the minority stock to question the sale of the Parrot Company to the Anaconda Company.

On my previous examination I testified generally that there was an appraisal of the properties of the Parrot Company and the other companies in connection with the sale or transfer of the property of the Parrot Company to the Anaconda Company. In connection with that sale I personally examined the reports of the appraisers and gave them consideration with reference to ascertaining whether the sale was made on a basis that was fair and reasonable to the

172 Parrot Company as well as to the other companies, and talked with the appraisers and with the committees representing the different companies, and was familiar generally with all of these properties, and had been for at least six years previous, and before that had some general knowledge of them. It was certainly our intention, and every effort was made to see that a fair and equitable basis was reached, and the independent appraisers of the

company were told to value the properties of the company actually and fairly, which I am satisfied they did. In connection with that sale, the Amalgamated Company, owning about 51 percent of the capital stock of the Parrot Company, did not obtain any advantage over the stockholders of the Parrot. In my opinion the consideration that was paid for the properties of the Parrot Company by the Anaconda Company was full and fair value and a good sale for the Parrot stockholders of their property. In my judgment, the consideration which was paid by the Anaconda Company, of its capital stock, which I understand was 90,000 shares, represents a value which as a result of this consolidation of the ownerships of the titles in one company, was more valuable than the separate ownership previously in the Parrot Company; it was my opinion that the 90,000 shares of the Anaconda Company is worth more than the Parrot Company's property. The greatest value of the combined properties after the acquisition of these properties by the Anaconda Company was very much greater than the separate value of these same properties under the different ownerships, and it has been proved since the time of the consolidation in the lowering of cost to the companies and the bringing together, altogether aside from the elimination of litigation. We had no information which would lead

me to believe that the Parrot stockholders were giving up
173 their property for less than what it was worth. On the other hand, all the information that was available went to prove that the Parrot Company was benefiting by the trade, was getting more value in the Anaconda stock given to it than it had in ownership of the properties; nothing was withheld, no information of any kind that would have influenced the trade that was withheld from anybody. As an individual or officer or director or stockholder in any other company I did not secure any advantage over any of the stockholders of the Parrot Company in connection with that sale. When I speak of the Amalgamated Company controlling the operations of the other companies, of the Anaconda Company for instance, I meant it controlled the ownership of the stock; the management of the company was not controlled by the Amalgamated; each had its own management, conducted its own affairs, conducted its own business; each had its own board of directors and each had its separate officers and managers to conduct the operations. I presume the control of the stock could have enabled the Amalgamated Company to determine what the policy of the company should be. I think I was a director on practically all of the subsidiary companies and a director of the Amalgamated, but as I say, the Amalgamated Company did not exercise control in the management. The Parrot Company was, I may say, our greatest care. It was mining ore that was very low grade. I had great difficulty in making any reasonable profit; we exercised every care to see that its management was of the best; we took men from other mines who had been successful in obtaining low costs, and put them into the Parrot mine, and generally used every care in the conduct of its affairs to give it the best possible chance to get along. The Parrot Company operated at a considerable profit both before and after
174 the Amalgamated got control of it, but it was exhausting very rapidly what ore it had developed in the mine and the

development of additional ore was very slight. The Parrot developed less ore proportionately to the amount of development work done than any mine in the district, in which the Amalgamated had any interest. Nothing was concealed from the stockholders of the Parrot, which would enable them to pass on the expediency and desirability of a sale to the Anaconda Company.

At the time I made a contract with William A. Clark to purchase certain properties of the Original Consolidated Mining Company, I do not know that the facts of that contract were disclosed in any way to the stockholders of the Parrot Company; the Parrot Company had sold its property to the Anaconda Company at the time. The appraisers I spoke of had to do with all of the companies that went into the consolidation and I was in conference with them constantly,—a number of times. They were Frank Klepetko—Mr. Klepetko was not at that time in the employ of the Boston & Montana Company; he had been some years before, but not at that time; also Herman Keller; he is a mining engineer and metallurgist who had some years before been in charge of the Parrot smelter at Butte and acted for the Parrot Company there, and Professor Kemp of Columbia University, a geologist. I do not remember what their report was. I remember the conference was held when they reported on the properties of all of the companies; I think they made a written report; I do not recall just now whether they did or not, or whether they reported verbally or not; they reported to the different committees of the different companies.

175 Redirect examination:

I did not take active direction in these negotiations because I was a director of all of the companies. The committees of each of the companies negotiated on behalf of its own company for its own properties. These appraisers reported to these committees, but in a general conference, upon general talks of the situation, I talked with all of them, with the committees and with the appraisers more or less. These negotiations had been pending for some time before they finally resulted in the execution and delivery of the deeds; the deeds were not delivered until weeks after the negotiations were practically closed. At all times after becoming interested in the management of the Parrot Company I exerted my best effort to obtain the largest possible results for the company in the mining operations. Never to my knowledge did the Amalgamated Company ever attempt to exercise any power it might have had by reason of the ownership of the majority of the Parrot stock and other companies to the detriment of these companies. I never heard of it doing any such thing, and never had any intimation of any kind that any attempt of that sort was ever made by the Amalgamated."

22. Add to the words "deposition of Albert H. Melin" the words "a witness for the complainants."

23. Add to the portion of the deposition of Albert H. Melin contained in appellants' said statement, at the end thereof, the following:

"In the minutes of the meetings of the Board of Directors of the

Anaconda Copper Mining Company I find a reference to the Parrot Company under date March 24, 1910, special meeting of the Board of Directors, Anaconda, March 24, 1910, as follows: The secretary then read to the meeting the report of the experts, Messrs. Herman E. Keller and James F. Kemp, as follows:

Butte, Montana, March 6, 1910, B. B. Thayer, President of the Anaconda Copper Mining Company, Dear Sir: As requested by you, we have carefully examined into the resources and relationships of the various companies involved in the proposed consolidation. Every facility and all necessary assistance has been afforded us in our observations and inspections. We have personally studied the maps of the mines, and have gone underground in the principal properties where questions of extralateral rights are involved. We have visited the Great Falls and Washoe Smelters, and the affiliated plants at Anaconda, which embrace the shops and equipment of the B. A. and P. Railroad; the Brick works, the Foundry, and the experimental ranch. We have also inspected the saw mill and factory of the Big Blackfoot Milling Company at Bonner, and the similiar plant of the Anaconda Copper Mining Company at Hamilton. At all of these places the books were freely placed at our disposal. The records are kept in such a manner as to simplify the drawing of conclusions. Furthermore, for years past we have been familiar with the conditions prevailing at Butte. The plan of consolidation is that the Anaconda Copper Mining Company as per your circular letter of February 15, 1910, should increase its capitalization from 1,200,000 shares of a par value of \$25. each, to 6,000,000 shares of the same par value. This increase of stock is for the purpose of acquiring the following companies upon the basis indicated.' Then the Parrot is named. 'Parrot Silver & Copper Company, 177 90,000 shares. The balance of the shares to remain in the treasury.

The Equity of the Proportional Allotment. Upon the basis of the information before us we consider the above proportionate allotment fair and just to all concerned. The interests of the smaller companies have been carefully considered and maintained. In reaching this conclusion we have gone fully into the data, such as inventories, costs, profits, reverses, depreciation, production, etc., upon which the allotments were based, and into the methods and reasons for their determination. The Advantages of the Consolidation. The claims of the several companies operating in Butte are so involved in situation as to make mining operations, when carried on independently, fraught with such inconvenience, duplication and unnecessary expense. If planned as a unit many advantages will accrue in the facility of work and in economies of development, hoisting and pumping. There are instances now in which the ore belonging to one company is unavoidably hoisted through the shaft of another, involving adjustments of expense; while central stations for pumping will prove much superior to individual installations in each shaft. Single claims are sometimes entirely surrounded by those of other companies, and there are fractional claims of irregular shape and of

small area. Aside from these relationships, the companies dovetail into one another, to a marked degree, but the Anaconda holds the central position, and is the one to naturally take the lead in the consolidation. Besides these involved relationships of situation, there are many instances of a joint ownership of single claims, making it very difficult to keep track of property rights in mined ore. The actual ownership of ore shipped to the smelter must often remain in suspense on the books at the smelter for a protracted

178 period, and even then it may be impossible to accurately decide it. There are city lots arranged like a checker-board with regard to one another, some carrying mineral rights, others none. They are often owned in a very complicated way by several companies. Expensive book-keeping is thus required, and much clerical work is necessitated. In the elimination of all these difficulties very important improvements will result which may reasonably be expected to reduce the cost of production by at least a goodly fraction of a cent per pound of copper. In the case of the Red Metal Company advantages are afforded in that the Company acquires smelter privileges not now possessed. If, moreover, important improvements are projected in the future, which will involve heavy expenditures and which will reduce even in very small degree the cost of production per pound in the enormous total of the companies, they can be carried out most efficiently under undivided ownership. We may cite in this connection the early introduction of greatly increased electric power.

The Necessity of Consolidation.—The most serious aspect of the whole situation is concerned with the ownership of ore in the ground, under the provision of the United States law. Many veins have been discovered in the past, and others are likely to be found in the future, hundreds of feet beneath the surface. Title to the ore in these veins depends upon unknown apexes, indeterminate extralateral rights, sub-fault apexes, common-law principles, etc. In instances the deep discoveries lie more than two thousand feet within the earth. The apexes could only be demonstrated by expensive development, since without this they cannot be located with certainty because of the frequent variations in dip, forking veins, disturbances from faults, and

179 the obscure and unmineralized character of the portions near the surface. Increasing experience at Butte has shown that some veins, especially of the Blue Vein Series, altho barren on upper levels, or even unnoticed, carry at great depths important but somewhat scattered bodies of ore. The ore lies so deep as to make the demonstration of the actual apex extremely expensive even if the obscure and unmineralized fissures in the oxidized zone do not altogether prevent such a demonstration. Under the conditions now prevailing therefore, possibilities of trouble are always present, and consolidation furnishes the only guarantee of uninterrupted and peaceable operation. We consider the unification of interests not only desirable, but for these reasons absolutely necessary.

Legal Aspects of the Consolidation.—So far as we understand

the situation there is no legal obstacle to consolidation along the lines and on the terms proposed. Finally, we may state that the elements of this consolidation include metal and coal mines, smelters and lumber plants. Each of these is necessary to the other, and the combination presents a natural and complete organic unit. Respectfully, (Signed) James F. Kemp, Herman A. Keller.'

I read the record of a resolution yesterday adopted by the Board of Directors of the Amalgamated Company in December, 1910, with reference to purchasing the outstanding stock of the Parrot Company, and I was asked a question by Mr. Dunham referring to that resolution, asking whether the company did take over all the assets of the company under that resolution. As a matter of fact the company did not take over any of the assets of that company under that resolution; the Anaconda Company had previously acquired all of the assets of the company, and had issued in payment those 90,000 shares of fully paid stock; that resolution was December 19 of the

180 Amalgamated Company, all it offered to do at that time was to give the outstanding stockholders of the Parrot Company the opportunity to take exactly what they would have been entitled to receive in case of the final dissolution and liquidation of the Parrot Company for distribution among the minority of the Parrot Company. Pursuant to that resolution an offer was made to the stockholders of the Parrot Company by the Amalgamated Company to give them their distributive share in the assets of the Parrot Company, which they would have been entitled to receive had the Parrot Company been dissolved, and that was made through Kidder, Peabody & Company in writing, and in accordance with that offer a large additional amount of the capital stock of the Parrot Company was acquired by the Amalgamated Company, it having now acquired all of the stock of the Parrot Company except about 6608 shares, and in that 6608 shares are included the 1210 shares held by the complainants in this action. That offer made by the Amalgamated was general and included all of the outstanding stockholders.

181 *Deposition of Albert H. Melin (a Witness for Complainants).*

My name is Albert H. Melin. I am fifty-five years of age. I live in New York City. I am Secretary-treasurer both of the Anaconda and Amalgamated Copper Company. I have been Secretary-treasurer of the Amalgamated since 1905 or 1906 and of the Anaconda Company since November or December, 1911. I was once Secretary-treasurer of the Parrot Company succeeding Mr. Charles D. Burrage in November 1906. I never visited the Parrot or Anaconda mines. I was a stockholder in the Parrot Company to the extent of five shares while I was Secretary-treasurer. I still own them. I am now President of the Parrot Company and have been since December 1911. I first became connected with the Parrot Company at the suggestion of F. P. Addicks whom I had known since 1899. I am not a stockholder of the Anaconda nor of the Amalgamated. I knew H. H. Rogers quite well and William Rockefeller. I know William G.

Rockefeller. In round figures I should say one million shares of the Parrot Company are now held in the name of the Amalgamated Company and stand in its name. They were transferred to the Amalgamated by Kidder, Peabody & Company just prior to January 1912. Previous to that time they had stood in the name of various stockholders, 110,000 shares being in the name of William C. Rockefeller; 6300 shares in Mr. Addicks' name. The Amalgamated now owns all but 608 shares of the Parrot, as I remember it.

Witness here produces records of the stockholders and directors of Anaconda Company showing authorization by the stockholders to the directors to purchase the property and assets of various other companies, including Parrot Silver & Copper Company, and 182 a copy of the agreement of sale and purchase between the Anaconda Copper Mining Company and the Parrot Silver & Copper Company as follows:

"This agreement made and entered into this 26th day of May, A. D., 1910, between the Anaconda Copper Mining Company, a corporation organized under the laws of the State of Montana, hereinafter described as the first party, and the Parrot Silver & Copper Company, a corporation organized under the laws of the State of Montana, hereinafter described as the second party. Witnesseth; That subject to the conditions and agreements hereinafter set forth the second party hereby agrees to sell and does hereby sell, for and in consideration of 90,000 shares of the capital stock of the first party, fully paid and nonassessable, to be issued and delivered by the first party to the second party, or to such person or persons as the second party may hereafter designate, and the first party agrees to purchase, and does hereby purchase upon the said consideration all the mines, mining ground, mining rights, claims and locations, and all works, machinery, tools and implements whatsoever, to the second party belonging and wheresoever situated, lying or being, and for whatever purpose used, owned or possessed, also all water and water rights, reservoirs, and reservoir rights, pipes, flues, ditches, and other water works and rights; timber, timber rights, lands, easements, and other real estate, improved and unimproved, to the second party belonging and wheresoever situated, lying or being, together with all and singular, all rights and privileges possessed or enjoyed in connection therewith; also all right, title and interest, whatsoever, legal or equitable, of the second party, of any and all lands, mill rights, mills, easements or other real estate, whatsoever and wheresoever situated, lying or being; also all works, plants, mills, tramways, 183 machinery, good will and other property whatsoever, and wheresoever, sitting, lying or being; also all stock and shares of stock of or in any corporation to the said party belonging or any or all to which it is in any way entitled, whether issued or not issued, or whether standing in the name, or to be issued to or in the name of the second party or of any person or persons whomsoever in trust for it or for its use, or being either express or implied; also all bills receivable, accounts, moneys on hand, moneys due or to become due by reason of any past sales or contracts; also all ores, minerals and metals, which have been or which may be mined, in transit, or in

course of treatment and reduction all matte-, bullion, copper, gold, silver and other metals on hand, in transit or in course of refining. All precipitates, argentiferous mud, ready to be melted or parted; also the right to inspect, examine and at all reasonable times to take copies of all books of account, records, letters, copies of letters, files and all private books, documents and papers whatsoever of the second party. Also any and all other properties, real, personal and mixed, corporeal and incorporeal, legal and equitable, choases in action and possession of every kind, character and description, wherever the same may be situated, belonging to the said second party or in which the said second party is in any wise interested or entitled to become interested, and not in limitation of the foregoing, but in extension thereof, there is hereby sold and transferred all, each and every property and property rights of every kind, character and description which the said second party has now or may hereafter become entitled to, by virtue of any past transaction; also all contracts of every kind and description. The foregoing sale and transfer is

made subject to the following conditions: (a) The said first
 184 party agrees to take over the said business and property of the said second party as a going concern. Said sale and transfer to be made as of and take effect from the last hour of the 30th day of April, 1910, and to carry and fully perform and discharge all contracts, obligations and liabilities of every kind, character and description, whether in contract or in tort, and whether now or hereafter enforceable against the second party and to undertake to and fully carry out and completely perform all valid executory provisions of any contract or contracts which may exist at the date of the transfer and delivery of all the property and assets of the said second party, to the said first party. (b) Also subject to all existing leases, releases, rights of way and other easements heretofore granted, made or given by the said second party or its predecessors in interest, and also all vested rights obtained by others against the said second party, or its predecessors in interest, by legal proceedings or by adverse possession or user. (c) All taxes, liens and assessments upon or in part of the property sold, or against the second party, whether due and payable or to become due and payable shall be paid by the said first party hereto through its proper officers, duly authorized. (d) Said second party agrees to execute and deliver any and all deeds, conveyances or other instruments necessary or proper for carrying out this agreement, according to its true intent and meaning, and said first party agrees to make, execute and deliver such undertakings, releases, stipulations or other instruments as may be necessary on its part to carry out all the terms and provisions of this agreement, according to its true intent and meaning. In Witness Whereof, the party of the first part has caused its corporate name to be hereunto
 signed by its President, and its corporate seal, to be hereunto
 185 affixed and attested by its Secretary, in pursuance of the resolution by its Board of Directors, duly adopted, and the second party has caused its corporate name to be hereunto signed by its President and its corporate seal to be hereunto affixed and attested by its Secretary in pursuance of the resolution of its Board of Di-

rectors adopted, under and by virtue of the authority conferred upon it by the vote of more than two-thirds of the entire issued capital stock of said company, present and represented at a meeting regularly called and duly held for that purpose on the 30th day of April, 1910, the day and year of this instrument first above written. (Signed) Anaconda Copper Mining Company, by B. B. Thayer, President, (seal) attested by C. F. Kelly, Secretary; Parrot Silver & Copper Company, by F. P. Addicks, President, attested under the seal by A. H. Melin, Secretary."

Witness also produces records of the Amalgamated Company under date of April 27, 1899, concerning the purchase of certain stock of the Parrot Company as follows:

"On motion duly seconded and unanimously voted that whereas the following property is necessary for the business of the company and is of the value of \$75,000,000 in the judgment of the Board of Directors and the purchase thereof has been authorized by the stockholders, therefore this company do purchase of William S. Bogart for the sum of \$75,000,000 as soon as the sale can be arranged and perfected the following property, namely: 620,000 shares of the Anaconda Copper Mining Company, 115,719 shares of the Parrot Silver & Copper Company, 83,702 shares of the Colorado Smelter & Mining Company; all the capital stock of the Washoe Copper Company; all the shares of the Diamond Coal & Coke Company; all the property known as the Carbon Coal Company; all the shares of the Big Blackfoot Milling Company; all the 186 shares of the Capital Lumber Company; all the property known as the St. Regis Lumber Company; all the shares of the Copper State Commercial Company; and all the shares of the Montana Meat Company, and that the treasurer be authorized to pay for the same out of the funds of the company."

And it was further voted that in order to carry out the foregoing vote the capital stock of the Amalgamated Company be increased from \$1,000- to \$75,000,000.

Witness testified as follows:

"I do not know William S. Bogart and never did know him nor where he lived at that time nor where he lives now or his business."

I find nothing in the record indicating what proportion of the \$75,000,000 capital stock was represented by the assets of the Parrot Company.

At a meeting of the Amalgamated stockholders held June 2, 1910, it appears that the following vote was passed:

"Whereas the proxy of this company was duly executed by the proper officers of this company authorizing the vote of the stock of the Parrot Silver & Copper Company owned by this company in favor of the sale and transfer of all the property and assets of said Parrot Silver & Copper Company of every kind and character to the Anaconda Copper Mining Company in consideration of the issuance and payment to the said Parrot Silver & Copper Company of 90,000 shares of the said capital stock of the said Anaconda Copper Mining Company at a special meeting of stockholders of the said Parrot Silver & Copper Company held at the office of the company, Butte,

187 Montana, on the 30th day of April, 1910, it was voted that the action of the officers of this company in executing each of the foregoing proxies for and on behalf of this company and the action of the said proxies at each of the foregoing stockholders' meetings in voting upon the said propositions as were indicated be and the same hereby is ratified, approved and confirmed."

The stock of the Parrot Company standing in the name of William G. Rockefeller had not been changed in the name of the Amalgamated Company since the last taking of depositions in this case.

The stock still stands in the name of William G. Rockefeller.

188 *Deposition of Harry I. Meehan (a Witness for Complainants).*

My name is Harry I. Meehan; age thirty-three; residence, New York City; cashier of the Anaconda Copper Mining Company. I have been connected with the Anaconda Company for ten years. I was never connected with the Parrot Company. I was Secretary and Treasurer of the Bridgeport Copper Company from January, 1909, till the company was dissolved. At that time I held stock in the Bridgeport Copper Company, but I do not remember where it came from nor who delivered it to me. I became Secretary and Treasurer at the request of Mr. Addicks, the President. I subsequently transferred the shares and turned them into the Parrot Company. I don't remember the amount paid me. The stock stood in my name. It must have been transferred by me when the other assets were transferred. I do not know that anything was paid to me for it, or that I paid anything for it myself. I understood that I held it to make me eligible as treasurer of the Bridgeport Company.

189 *Deposition of B. B. Thayer (a Witness for Complainants).*

My name is B. B. Thayer; my age, forty-nine; I reside in New York City and am President of the Anaconda Copper Company. I was a director of the Parrot Company about the year 1907 and in the year 1904 I became connected with the Amalgamated Copper Company as Mr. Rogers' assistant in the capacity of mining engineer. In 1904 I examined the Parrot Company as to its operating condition, but not as to the value of ore contained; not in the sense of a mining examination. Its condition so far as its operating condition went at that time was poor. The smelter at Butte had been dismantled before 1904. The shaft was always in as good condition as it could be kept. It had always been giving more or less trouble on account of moving ground, and in 1904 it was in fair condition and the other operating parts of the Parrot properties were in good condition. I never passed upon the values of the properties of the Parrot mine. Either in 1904 or 1905 I went over to the Gaylord plant. It was then I should say semi-completed both in regard to buildings and machinery. Two independent engineers,

Mr. Herman Keller and Mr. J. F. Kemp, examined the properties, including the Parrot property, in the interests of the general plan of consolidation. I have never seen any written report made by them.

190 I went through the Parrot mine with Mr. Tibbetts, the superintendent, in 1886; I was more or less familiar with it until 1892 when I left the camp. From 1904 I was familiar with the operations of the Anaconda and the Parrot; each company was operated just as independently as though the Amalgamated never existed,—absolutely; that continued right through. The ore from the Parrot was taken to Anaconda to what is called the Washoe Smelter; the Anaconda Company's ore and the Parrot Company's ore were not sent together to the smelter; they were distinguished just as you might distinguish between one mine and another; kept absolutely separate, shipped separately, sampled separately, assayed separately, and only put together after the values had been obtained, and then in order to perfect the charge for smelting operations. I could not tell without looking up the time, when any of the Parrot properties ceased operating through their own shafts, if at all, but I think the Parrot operated right up to the end with the exception of a small amount, that was with the Moonlight ore to mine some of the Bellona ores. The Parrot properties were on the same trend as the bodies of ore of the Anaconda; the veins practically came together; the displacement occurred in the vein in the strata in which it ran. There was a fault on the east end of the Parrot going down, also on the west end which shortened the ore body and which occasionally kept us constantly sinking there in order to keep up our ore reserves. It is not generally true in that district, that the ore grows richer according to the depth. The two faults that I have enumerated in the Parrot were of such a character that they cut the veins abruptly. We never found the end of that displacement; we never found them but we endeavored. In 1910

191 there was a limited amount of ore remaining in the Parrot; the full amount of ore that we could find had been blocked out; we had blocked out ore to the extent that is customary in usual operations; as I tell you, this chute grew shorter on the bottom levels; necessarily the amount of stoping also grew less, so that instead of having several hundred feet of level we had to sink our operations in order to keep our operations there. The same problems do not exist in the Anaconda properties; we had not sunk the Anaconda shaft for five years. The Anaconda shaft had been sunk to a greater depth than the Parrot.

In my judgment, the cost of bringing the ores of the Parrot Company to the smelter at Gaylord would be very much higher than to Anaconda; I should say the additional cost of transportation was from the fact that a small unit had practically the same overhead charge as a large one. The ores of the Parrot Company, subsequent to my connection in 1904, were treated on as low a basis as that of any other companies whose ores were treated at Anaconda. There was absolutely no discrimination; if there had been it would have been in favor of the Parrot. The Parrot Company received credit

for every pound of ore taken from its mines. There is no difficulty whatever in keeping account of the ores sent by different producers to the smelter; we have to do it with out customers, and have done it for years with the North Butte Company who ships thousands of tons daily. You take a corporation like the American Smelting & Refining Company; they have thousands, and each one has to be kept separately and accounted for, and that was always absolutely and strictly done. Since my connection with the Parrot Com-
 192 pany everything has been done that could reasonably be done to get the most out of the Parrot Company; there has no attempt or inclination or any suggestion on the part of anyone, so far as I know, to get any advantage of the minority stockholders of the Parrot Company; quite the contrary. Personally I have never had any intention to take advantage in any manner of the minority stockholders, including the complainants, and have never done anything that would have that effect. I have been in the habit of examining these mines and am familiar with their operations and have been since 1904, and as a result of those operations I have knowledge sufficient to enable me to determine the relative values of the different properties. In connection with this consolidation in 1910 under which the various companies, including the Parrot Company, sold and transferred all of their properties to the Anaconda Company, in my judgment that was done on a basis of absolute fairness, and in my opinion the Parrot Company received more for its properties than they were worth. The connection between the Parrot and the Anaconda was pur through originally for an air connection; it was never used to take ores through it; it would have to be shoveled ten or twelve feet. Assuming that the Parrot Company had its own smelter, and using the ores that were mined there, and that it would be a profit paying smelter to the Parrot mines, and was in full going operation, you ask me if I know of any reason why that smelter should be closed down. I do not, except that it could not be operated as cheaply as ores could be treated elsewhere; good business men would naturally, I think, close it then. The grade of the Parrot ores that was treated from 1900 to 1904 was
 193 not the same as that in later years. The *great* of ore in the Parrot mine was constantly decreasing; this was not true with the Anaconda mine. In 1904, from my observation of the Parrot Company, it did not need a new smelter of the capacity of 5,000 tons to smelt its ores; the available ores of the camp, of the Amalgamated properties, exclusive of the Parrot, did need that.

Recross-examination :

In the early days of the Parrot the ores were richer; that is, had a greater copper content, and afterwards the copper contents decreased. Assuming that the plant at Gaylord had actually been completed for the benefit of the Parrot Company, and that the Parrot Company had treated its ores there, I do not think that the mine could have been operated at a profit; not in later years at any rate. Everything was done to develop the Parrot veins that could

be done by men who were supposed to know their business. We found no indications of any additional veins in the lower levels. The main Parrot workings have reached a depth of 2,000 or 2,100 feet; in 1904 I think they were about 1,400 or 1,500 feet, if I remember right."

194 *Deposition of William G. Rockefeller (a Witness for Complainants).*

My name is William G. Rockefeller. I am forty-one years old. I live in New York City. My business is that of private banking. I am a son of William Rockefeller. I own one hundred shares in the Amalgamated Company. I am not a stockholder in any of the so-called subsidiary companies of the Amalgamated. I do not own the 110,000 shares of Parrot Silver & Copper Company standing in my name. It must belong to the Amalgamated Copper Company. It was first placed in my name purely as a matter of convenience, as I recollect it, in case it was desired to use the stock as collateral. It was first transferred to my name I should say shortly after the Amalgamated Copper Company was formed, shortly after 1899, I should say within a few weeks after the formation of the company. I do not recall at whose suggestion it was done. As far as I know Mr. H. H. Rogers was largely instrumental in forming the Amalgamated Company. I never had a certificate of the stock in my hands individually but undoubtedly did as an officer of the company, as treasurer of the Amalgamated Copper Company. I paid nothing for the stock myself. I do not know who paid for it. I remained Secretary-treasurer of the Amalgamated Company until about January 1, 1905, since which time I have had no official connection with the company, and except in my official capacity I have had no custody or control of the certificates of stock of the Parrot Company standing in my name. I believe it still stands in my name, and that the dividends have always been paid by check to my order. The only part I took in the acquisition by the Amalgamated of its interests in the other mining properties was simply to draw the check in payment therefor. I cannot state approximately how much was paid for the interest acquired by the Amalgamated in the Parrot Company. I know of no record of it. I never saw any. I signed one check for \$75,000,000 for a number of the properties.

I don't know how much was paid for the Parrot. There was no record at the time that I know of. I don't remember to whose order the check was drawn. It was probably made out to somebody whose name was given me by Mr. Rogers. I say that because Mr. Rogers was the one that primarily was responsible for the formation of the company. During my term of office in the Amalgamated Company, its policy with regard to the acquisition of mining properties was to secure desirable properties whenever they could be obtained on what we considered favorable terms.

The dividend checks upon the Parrot stock which stood in my

name as treasurer belonged to the Anaconda Company, were made out to me but paid over to the Amalgamated Company; I turned over to the Amalgamated all dividends on this Parrot stock standing in my name, or it was done for me, and with my acquiescence and approval. So far as I know, neither Mr. Rogers or anyone else connected with the management of the Amalgamated Copper Company, ever, in any way, expressed any intention or intimation to discriminate against the Parrot Company in favor of the other companies in which the Amalgamated had an interest; on the contrary they always instructed me to see that everything was done in a perfectly fair manner. So far as I know, everything was done in the development and operation of the Parrot property in the interest of all its shareholders.

196 *Deposition of James F. Kemp (a Witness for Complainants).*

My name is James Furman Kemp. My age is fifty-three. I live in New York City and am Professor of Geology in Columbia University. I graduated from Amherst College in the class of 1881, and from the School of Mines Columbia University in 1884, where I took the degree of Engineer of Mines. I have visited a great many copper mines at one time or another and have had some professional experience in addition. I was once employed by the Parrot Company to make a preliminary examination of a matter that was at issue then or might be the subject of litigation between them and the Clark interests, the Steward claim. That is the only time that I was employed by the Parrot Company. I have been employed by the Anaconda Copper Company twice. I think never by the Amalgamated. I was employed to examine the Parrot property by Cornelius F. Kelly of Butte, counsel for the defendants, sometime in the month of August 1909. I went over all the maps that covered the workings of West Steward and some of the adjacent claims and the claims having the option on them and the Walsh Company, and then went under ground in the West Steward shaft, which I believe is the name of it, and came south along the accessible cross-cuts. I also went down in the Parrot shaft and south on some of their drifts but I don't believe I could give you the exact number. The issue that I was called upon to assist in determining, as I understood it, was whether there would lie an action against the Clark properties on the basis of apex
197 rights. My attention was particularly directed to a Steward vein and to one I called the Steward fault. There were two distinct veins as I recall it. As far as I know above the two hundred level there was no effort made to ascertain where the Steward fault vein so-called apexed. That was a very important question indeed. I wrote and submitted a report on my examination addressed to the Parrot Silver & Copper Company.

Mr. French: Have you that report, Mr. Garver?

Mr. Garver: I have not. I find it had been sent west before any

notice to take the deposition of this witness was given. We have not had it here in this office, so they tell me.

Mr. French: It will appear of record that Mr. Kelly stated to the counsel for the complainants at the hearing in June that the report was here and that was ten days or a fortnight ago.

By the Witness: I retained a copy of my report but I haven't it now. I last saw it last Monday when I mailed it to Cornelius F. Kelly in Butte by registered mail. I did so because I learned from Mr. Thayer that Mr. Kelly had written him that they could not find the report in Butte. My impression was that the litigation was in progress in Butte and Mr. Thayer told me that he could not find his report in New York so that I forwarded my own copy to Mr. Kelly at once. I have no other copy. If I had my report before me or a copy of it it would undoubtedly be of great assistance to me in testifying.

198 *Deposition of O. L. Dillenbeck (a Witness for Complainants).*

My name is O. L. Dillenbeck. I live in Anaconda, Montana. I am forty-seven years old and am chief clerk of the Butte, Anaconda & Pacific Railroad at the present time. I was in the employ of the Parrot Silver & Copper Company from about September, 1898, until about a year and a half ago as bookkeeper and clerk. I was with the Parrot Company until April 1910. I was then bookkeeper and had been since about 1900 or 1901. In 1900 I had charge of all the books, including the cash books and production books. The general ledger would show the balance of the surplus account of the Parrot Silver & Copper Company on April 30, 1899.

(Witness examines certain books produced by the defendants.) The trial balance was a separate book. There was such a book but I don't find it here. The books were turned over to the auditors, Pogson, Peloubet & Company. Pogson, Peloubet & Company had access to the books in 1904 and they got them in condition, and the balance that was made up in 1904 with which they started the books in New York was not furnished to them by me. I have no recollection of any appraisal of the properties of the Parrot Company in 1904. I think there were General Manager's reports made of the Parrot Company for the year ending April 30, 1899. Those reports were kept by the company and formed a statement.

(Witness is here shown a book.) This book shows the production of the mines, totaled every month, every six months and every year.

The total for the first six months of 1904 ending June 30th would be 251,277.956 pounds wet weight; 245,956.961 pounds dry weight. That would be 9,422,790 pounds refined copper; total valuation \$1,451,114.82.

The total recapitulation for the six months ending December

31, 1904, was 178,047,576 pounds wet weight, 174,652,758 pounds dry weight; copper contents 6,513,751.

The recapitulation for the six months ending June 30, 1905, was 144,669,218 pounds wet weight, 143,311,824 pounds dry weight.

For the six months ending December 31, 1905, wet weight 171,-967,903 pounds, dry weight 168,345,118 pounds.

For the six months ending June 30, 1906, wet weight 146,958,-600 pounds, dry weight 144,145,316 pounds.

For the six months ending December 31, 1906, wet weight 80,-083,738 pounds, dry weight 78,509,554 pounds.

For the six months ending June 30, 1907, wet weight 86,104,-888 pounds, dry weight 84,128,084 pounds.

For the six months ending December 31, 1907, wet weight 63,-274,195 pounds, dry weight 61,461,736 pounds.

For the six months ending June 30, 1908, wet weight 47,065,626 pounds, dry weight 45,834,111 pounds.

For the six months ending December 31, 1908, wet weight 159,-212,738 pounds, dry weight 155,993,005 pounds.

For the six months ending June 30, 1909, wet weight 139,945,-829 pounds, dry weight 136,578,991 pounds.

For the six months ending December 31, 1909, wet weight 111,-044,535 pounds, dry weight 108,119,277 pounds.

For the six months ending June 30, 1910, there was no recapitulation. It can be computed. For the six months ending June 30, 1911, wet weight 57,300,965 pounds, dry weight 55,660,675 pounds.

200 For the six months ending December 31, 1910, wet weight 97,844,234 pounds, dry weight 94,609,040 pounds.

The total number of shares issued by the Parrot Silver & Copper Company was 229,850.

201 *Deposition of William F. Battin (a Witness for Complainants).*

My name is William F. Battin. I live in Butte. I am thirty-four years old and am a public accountant. I am manager for Pogson, Peloubet & Company and have been at the Butte office for about four years and a half. In a general way I am more or less familiar with the books of the Parrot Company.

(Witness is here shown book which he identifies as the trial balance book of the Parrot Company.) There is a trial balance here under date of April 30, 1899, the aggregate footings being \$4,278,130.13. The same on both sides of course. The surplus on April 30, 1898, was \$1,620,998.24. The net increase in book-surplus of the Parrot Silver & Copper Company for the year ending April 30, 1899, was \$277,966.23 after payment of dividends presumably. The book surplus of April 30, 1899, was \$1,898,964.47.

(Witness is shown also stock ledger of the Parrot Silver & Copper Company.) The Amalgamated Copper Company under date of May 6, 1912, appears to have owned 225,183 shares of the Parrot

Silver & Copper Company which seem to have been mostly acquired during the year 1912. I do not find any account with the Amalgamated Copper Company at or about April, 1910. In April 1910 Mr. Andrew B. Grafius was the owner of ten shares and in the same month Mr. Albert H. Melin was the owner of five shares according to the ledger, and is still so far as the ledger shows. In April, 1910, Mr. John D. Ryan owned ten shares according to the ledger and Mr. B. B. Thayer five shares.

202 "Cross-examination :

The book surplus about which I have stated is arrived at as shown by the book, by taking the difference between the aggregate of assets less the liabilities and less the capital stock, as carried on the books. The items that go to make up the assets of the company as shown by the balance are as follows: Cash, \$20,058.21; C. D. Burrage, Treasurer, \$144,352.45; Bridgeport Copper Company, \$683,177.72; Bridgeport Copper Company—overdrawn account, I take it,—\$14,257.61; Jacob Swenk, \$1,000.00. Estate A. J. Davis, \$1,523.91; D. G. Bricker, \$4,384.62; Insurance, \$1,196.56; Copper and Silver inventory, \$478,817.67. And then come the stock accounts, \$654.12; Coal, \$1,173.38; Coke, \$601.48; Limestone, \$46.50; Ore, \$35,084.22; store house, \$21,325.97; Parrot mine store house, \$3,925.12; and then, permanent investment, \$749,700.00. New works investment, \$724,151.96; Mine property, \$891,978.63; Treasury stock, \$1,500.00; Bridgeport Copper Company stock, \$498,500.00. The total of the assets is \$4,278,130.13.

In the item of Permanent Investment, \$749,700.00, contained in the above statement of assets, I note from the books there is included an item "New Works Investment" amounting to \$724,151.96. My general knowledge of that is that it represents the cost of the smelter and other property at Gaylord. That is the amount of money that was invested in the new works at Gaylord. My knowledge is obtained from the books and vouchers of the Parrot Company. The ledger on page 169, Ledger No. B, contains an account entitled "New Works Investment," and the balance of the account, as shown there, down to April 30, 1899, is \$724,151.96. You call my attention to an item in the above statement of "Mine property, \$891,978.63." The name of that account has a very general

203 name; but this balance is given in the ledger of the above account April 30, 1899. This was transferred from an old ledger on June 1, 1897, and covers the period from about 1894 to 1897. I should say that it represents the cost or money invested in mining property. In the statement for the period ending April 30, 1898, I find an item designated "Mines, Permanent Investment," in the amount of \$750,000.00, so that between April 30, 1898, and April, 1899, there was apparently a decrease of \$300,000.00 exactly, in those two accounts. On April 30, 1899 the statement to which my attention was called gives the Mine Property account \$891,978.63. In the statement of April 30, 1898, "New Works account" \$702,574.12; there was an increase in this item on these two statements of \$21,577.84. This is represented by charges on the book, net

charges of cash, repair and supplies in the amount I have just stated. I could not say from my own personal examination how the old smelter here in Butte was carried on the books of the company as of April 30, 1898. At this time, 1898 and '9, I don't know of any depreciation charges that were carried on the books. I do know that depreciation charges were made by us later; sometime about 1904, or thereabouts, or maybe a little later. These depreciation charges were made upon the recommendation of Pogson, Peloubet & Company, who have been the independent auditors of the Parrot Company going back to either 1901 or 1902. I don't personally know why these depreciation charges were made, but I know why the depreciation charges are usually made. It is considered good judgment to provide depreciation on the books for things that depreciate and that have deteriorated. If as a matter of fact it is necessary to write off in the books as valueless or comparatively so, amounts that represent the expenditure of funds, in building works, for instance, that cannot be used, and if as a matter of fact they are utilizing a smelter and consequently depreciating it, the book surplus would not correctly show the difference between the assets and the liabilities of the company, unless these items so enumerated were taken care of and the assets of the company diminished by the loss sustained in this connection. The books would not correctly represent the state of facts or affairs: the surplus would be inflated.

204 *Deposition of H. A. Gallwey (a Witness for Complainants).*

My name is Harry A. Gallwey. My age is forty-six. I live in Butte, Montana. I am manager of the Butte, Anaconda & Pacific Railway Company. We transport the ores from the Anaconda mine to the smelter. The termini of the railway company are Butte and Anaconda. I have been manager of this company for about a year and a half. Prior to that I was manager of the Parrot Silver & Copper Company. I left the last named position about April 15, 1911. I had then been manager for about twelve years from May 1899,—that is from and after the time that the management changed. My immediate predecessor as manager was Robert D. Grant. Before that I was working in the office of the Anaconda Copper Mining Company and had been there about four years as bookkeeper and head timekeeper. I was a director of the Parrot Company until two or three months ago. As general manager my duties were to conduct the business and mining operations of the company. At the time that I became manager, the Parrot smelter in Butte was running. I operated it I think until September, 1899. Its capacity was then about five hundred tons a day. Shortly after September, 1899, it was dismantled under my supervision. At that time the construction of the Gaylord plant had been discontinued. That was before I assumed management of the affairs of the company, I think about a year before, during Mr. Grant's administration. The buildings were completed and some of the machinery was there. It was not until after I assumed management of the company that

the dismantling or the disposal of the Gaylord property began.

205 The Washoe smelter began operations in February, 1902.

Between September, 1899, and February, 1902, the products of the Parrot mines were smelted in Anaconda, which is twenty-six miles from Butte. I could not say whether the Anaconda or the Parrot was the older smelter. Both had been running a good many years. The Anaconda smelter was a great deal larger than the Parrot smelter.

On the date of the circular letter, (Complainants' Exhibit H, to-wit, April 7, 1910), the properties of the Parrot Silver & Copper Company consisted of something like twenty-one patented mining claims in this district.

The Adventure Lode, Lot 125; the Kanuck, Lot 219; Rialto, Lot 190; the Virginus, Lot 72; Midnight Lode, Survey 3385; Original No. 6, Lot 161; Original, Lot 86-A; Original Lode, Lot 86-D; Gray Eagle, No. 3; East Lode, Lot 570; Dart Lode, Survey 5824; Strip Lode, Survey 4788; Parrot Lode, Lot 134; Portion of Parrot Lode, Lot 45-A; Portion of Oden Lode, Lots 70 and 135; Portion of Bellona Lode, Lots 160 and 122; Portion of Original Lode, Lot 39; Little Mina Lode Claim, Lot 150; Portion of Buffalo Lode adjoining on the north, Lot 70.

I do not think that the properties I have just mentioned are all the properties which belonged to the Parrot Silver & Copper Company at that time.

The Ore Butte Champion Copper Wreath and the Last Hope, those are the two out near the Chinese Garden.

Q. I am asking you independently of that report what the properties of the Parrot Company were on that day. Does that circular, and you can use it to refresh your recollection, purport to state to the stock-holders all properties that the *that the* Parrot Company
206 owned on that date? Yes or no.

A. I think it does.

Q. Then if I understand this circular letter, Exhibit H, correctly, what you gentlemen who signed it wished the stock-holders to understand in substance so far as the Parrot mine was concerned, is that it was exhausted.

A. It was practically exhausted yes.

I recall that a few weeks prior to the date of this printed circular, Exhibit H, a report was made to the directors and stock-holders of the Parrot Company by Mr. Addicks and myself as a committee, appointed under vote of directors.

(Witness' attention is here called to a paper dated Butte, Montana, March 31, 1910, addressed to the directors and stock-holders of the Parrot Silver & Copper Company and signed H. A. Gallwey and F. P. Addicks, as follows:)

"BUTTE, MONTANA, March 31st, 1910.

To the Directors and Stockholders, of the Parrott Silver and Copper Company; Gentlemen:

At a meeting of the Board of Directors of the Parrot Silver and Copper Company, held on the 14th day of February A. D. 1910 the undersigned were appointed as a committee to investigate the character and extent of the Company's properties, their present condition, etc., for the purpose of entering into negotiations with a similar committee which had theretofore been appointed by the Anaconda Copper Mining Company, with a view of ascertaining and reporting back to the shareholders and officers of the company the terms upon which a sale and disposal of all of the property and assets of the company, of every kind and character, could be made to the Anaconda Copper Mining Company.

207 Having made such investigation and conferred with officials representing the Anaconda Copper Mining Company, the undersigned beg leave to report that the Parrot Silver and Copper Company is a Montana corporation, having a capital stock of \$2,300,000 divided into 230,000 shares, of the par value of \$10.00 each; that all of said capital stock has been issued. That attached thereto, and made a part hereof, is a list showing all the property of the company; as will be seen therefrom, the property of the company consists principally of mining claims, plant and equipment, located in Silver Bow County, Montana.

The property of the company, for convenience of description may be embraced under seven different groups; five of these groups consist of mining claims, mining grounds and mines while the other two groups are principally valuable for surface purposes. Of the five groups of mining property, only two are being actively operated, to wit; the Parrot and Little Mina groups; the other three, not in operation are the Oro Butte, which has produced considerable ore down to the 400 foot level; the Champion group, an old silver property and the Copper Reef Last Hope.

The Parrot group consists of the following claims, or portions thereof:

Adventure Lode	Lot	125
Kanuck Lode	"	219
Rialto Lode	"	190
Virginus Lode	"	72
Midnight Lode	Survey	3385
Original No. 6 Lode	Lot	161
Original Lode	"	86A
Original Lode	"	86B
Grey Eagle No. 3 East Lode.....	"	571
Dart Lode	Survey	5824
Strip Lode	"	4788
Parrot Lode	Lot	134
A portion of Parrot Lode.....	"	45A
" " " Ogden "	"	70-135
" " " Bellona "	"	61-122
" " " Original "	"	39

208 All the foregoing claims are contiguous and are operated principally through the Parrot shaft; this is a three compartment vertical shaft, 2151 feet in depth, with workings driven therefrom known as the 100, 200, 300, 400, 500, 600, 700, 800, 900, 1000, 1200, 1300, 1400, 1500, 1600, 1700, 1800, 1900 and 2000 foot levels.

These levels have developed ore reserves of approximately the same amount as is customary to block out ahead of actual mining operations in the Butte Camp. The principal air shaft for this group is situated about 950 feet westerly from the Parrot shaft, and is directly connected with the underground workings down to the 1200 foot level. On various levels from the Parrot shaft, connections are also made with the Nipper vertical shaft to the north, the Never Sweat workings to the east, the Blue Jay incline shaft on the south and the Original mine workings on the west. All the water in this mine is carried to the 1700 foot level, thence to a connection with the workings of the Never Sweat mine, where it is carried by a drain tunnel to the High Ore pumping plant. The Parrot shaft is surmounted by a 100 foot steel gallows frame; adjacent thereto is an engine house with hoisting engine capable of hoisting from 3500 feet vertical depth. The plant is also equipped with a boiler house, compressor buildings, two story change house complete, carpenter shop, blacksmith shop, machine shop, office buildings, barns, ice house, ore bins and other sundry store houses, making a thoroughly modern and well equipped surface plant.

The Little Mina Group consists of the Little Mina lode claim having an area of 17.16 acres, and a portion of the Buffalo lode adjoining on the north, having an area of .58 of an acre. The foregoing are worked through the Little Mina working shaft, 209 which is vertical, and two compartments have been sunk to the 1,000 foot level, from which level to the bottom, 1,153 feet in depth, the shaft has been enlarged to three compartments. Workings have been driven from the shaft upon the 50, 150, 400, 600, 800, 1,000 and 1,200 foot levels.

The surface equipment consists of a wooden gallows frame and engine house, office and change room, ore bin and various small store rooms sufficient for the necessities of the mine.

The Oro Butte Group consists of the following claims or portions thereof: Oro Butte lode, lot 78, Moscow lode, lot 109; Moscow lode, lot 442; Autocrat lode, lot 232; the west half of the Banker lode, lot 54, the Plutonian lode, lot 231, the Omaha Fraction lode, survey No. 4371; the P. & P. U. lode, survey No. 4373 and a portion of the Poulin lode lot 146, having a net area of 24.45 acres. There are two principal shafts on this group, the Oro Butte shaft and the Moscow shaft. The former is a two compartment vertical shaft, 325 feet in depth, having workings at the 150, 280 and 325 foot levels, while the latter is a two compartment vertical shaft 400 feet in depth, having workings at the 100, 150, 200, 250, 325 and 400 foot levels.

A considerable quantity of ore has been taken from the workings of this group, but the property has been closed down many years and all surface equipment removed or destroyed. The Poulin shaft,

1,200 feet in depth, is situated but a short distance east of this group and the development of the veins in depth could easily be done from this shaft.

The Champion Group consists of three claims:—the Champion lode, lot 410; the Agnostic lode, survey No. 3423 and the Empire State lode, survey No. 3422, having a total area of 29.34 acres, the veins therein carrying principally silver values. This property was developed by workings from a vertical shaft on the Champion lode, 350 feet in depth, and a considerable tonnage of silver ore extracted, but the property has been idle for many years past and all surface equipment and improvements removed.

The Copper Reef Last Hope Group consists of two adjoining claims, both undeveloped, having an area of 34.72 acres, located about two miles southeasterly from the Parrot Group. Some development of veins carrying copper values has been done on adjoining claims to the north and east of this group.

The two groups of land principally valuable for surface purposes consists of the old Parrot smelter property and another tract of land both situated on the flat below the city with Silver Bow Creek traversing through them. The old Parrot smelter property is a tract of land containing 152.64 acres, patented under placer title, less an area of 2.33 acres sold to the Western Iron Works for surface purposes. The old Parrot smelter, located thereon, was closed down in the year 1899, and practically all machinery and buildings have since been removed.

The Company has a copper water precipitating plant located on this tract in active operation, the copper water being derived from the solution of the soluble salts in the old concentrator tailings pile.

The other tract of land consists of 120 acres of Silver Bow Creek about one mile southwesterly from the old Parrot smelter tract and adjoining on the east the land occupied by the Butte Reduction Works, the smelting works of the W. A. Clark properties. From the 120 acres of this tract, an area of 3.24 acres has been sold to the Butte Electric & Power Company upon which a portion of their electric plant is located.

211 The Parrot Silver & Copper Company also owns a three-eighths interest in the Pearl Limestone placer, Survey No. 2816, in Township 1, S., R. 9 W. Silver Bow County, Montana, situated on the Oregon Short Line Railway about twenty-five miles southwesterly from Butte. There is a limestone quarry upon this property but no work has been done thereon for many years past.

The gross production of the company for the past five years has been as follows:

Ore. Dry W't, Tons.	Copper. Contents, Lbs.	Silver. Contents, Ozs.	Gold. Contents, Ozs.
585,553.50	36,565,663	1,780,473.33	6,030,808

Extensive repairs have recently been made upon the main hoisting shaft of the Parrot Group and it is believed that the mines belonging to this group will maintain a standard of production for

many years to come at about the same rate as these mines have produced during the past five years.

The Anaconda Copper Mining Company has recently through action taken by its stockholders, increased its capital stock from 1,200,000 shares, having a par value of \$25.00 per share, to 6,000,000 shares of the same par value.

The undersigned are advised that offers have been made by the Anaconda Copper Mining Company to purchase the following properties for the following number of shares of stock, to wit;

Red Metal Mining Company.....	500,000 shares
Washoe Copper Company	380,000 "
Butte & Boston Consolidated Mining Company....	300,000 "
Big Blackfoot Lumber Co.....	300,000 "
Trenton Mining & Development Company.....	120,000 "
Boston & Montana Consolidated Copper & Silver Mining Co.	1,200,000 "
Parrot Silver & Copper Co.....	90,000 "

212 The undersigned are also advised that such offers have already been accepted by the Botton and Montana Consolidated Copper and Silver Mining Company, Washoe Copper Company and Big Blackfoot Lumber Company and that shareholders' meetings are to be held for the purpose of submitting the proposition to the shareholders of the Red Metal Mining Company, Butte & Boston Consolidated Mining Company, Trenton Mining & Development Company and this company.

Upon the foregoing basis, the undersigned believe that the offer of 90,000 shares of the capital stock of the said Anaconda Copper Mining Company for all of the property and assets of the Parrot Silver & Copper Company is a fair and just offer, and that it would be to the best interests of the shareholders of this company to accept the same.

We therefore recommend to the officers and stockholders of the company that if the sale of all of the property and assets of this company can be made upon the foregoing basis, the same be carried out and completed.

Respectfully submitted,

H. A. GALLWEY,
F. P. ADDICKS."

213 *Parrot Silver & Copper Company, Silver Bow County, Montana.*

	Surv.	Sec.	Town.	Range.	Acres.
Adventure	699	13	3 N.	8 W.	1.93
Agnostic	3423	9	"	"	9.90
Autocrat	991	12	"	"	1.32
Bellona	686	13-18	"	7-8 W.	11.50
Banker West 750 ft.....	496	12	"	8 W.	8.
Champion	1598	9	"	"	9.22
Copper Reef	3884	21	"	7 W.	14.08
Dart	5824	12	"	8 W.	.004
Empire State	3422	9-10	"	"	10.22
Grey Eagle No. 3.....	2595	13	"	"	.48
Kanuck	966	13	"	"	4.14
Little Mina	707	12	"	"	17.16
Last Hope	2833	21	"	7 W.	20.64
Moscow	660	12	"	8 W.	.83
E. Moscow	1689	12	"	"	.15
Midnight	3385	13	"	"	.13
Mogul	5823	12	"	"	.003
Mineral Appn. No —.....	802	17-18	"	7 W.	68.85
Original No. 6.....	814	13	"	8 W.	1.70
Original No. 86 A-B.....	608	13	"	"	1.10
Original Lode Lot 39 E. 100 feet.....	...	13	"	"
Oro Butte	592	12	"	"	10.04
Ornstein Tract	19	"	"	45.52
Parrot Lot 134.....	789	13	"	"	1.39
Parrot Lot 45 A.....	325	13	"	"	3.79
214 Plutonian	990	12	3 N.	8 W.	4.11
P. and P. U. Lode.....	4373	12	"	"	.001
Omaha Fraction	4371	12	"	8 W.	.03
Pearl Limestone Placer (6/16 int.).....	3816	32	1 S.	9 W.	65.42
Rialto	906	13	3 N.	9 W.	1.99
Strip	4786	13	"	"	.09
Virginus	581	13	"	"	.7
S. W. ¼ S. E. ¼.....	...	18	"	7 W.	.40
N. E. ¼ S. E. ¼. S. E. ¼ S. E. ¼ N. W. ¼	...	24	"	8 W.	.120
S. E. ¼.....	...				

Moonlight Addition:

Lots 14 and 15 Block 5.

215 We had our engines do the work. They brought their report in to me and I signed it after looking it over and satisfying myself as to its accuracy. I was personally sufficiently familiar with the property of the company to enable me to form an opinion as to whether this information was correct or incorrect. I think the list attached to the report comprises all the property which the company owned or in which it was interested. I think there was nothing omitted.

Q. When you recommended that the offer of 90,000 shares of the capital stock of the Anaconda Copper Mining Company for all of the property and assets of the Parrot Silver & Copper Company was a fair and just offer and that it would be to the best interests of the stock-holders of this company to accept the same, on what basis did you make that recommendation?

A. Well I thought that was an exceptionally good price for the property. We had been operating four or five years at a loss. The ore bodies had played out on the upper levels and on the lower levels

and it got very low at low grade, and we were unable to make the properties pay; in fact we had to borrow money from our people down in New York to keep going.

Q. In other words, do I understand you to say that you are of the opinion that the Parrot stock-holders were getting 90,000 shares of the capital stock of the Anaconda Company for something that was practically worthless?

A. Yes; as far as the Parrot mine was concerned or its property I thought \$4,500,000 was an exceptionally good price. We were \$250,000 in debt. We had not been able to make it pay.

Witness' attention is called to Exhibit M, a map entitled "Parrot mine 1500, 1600, 1700, and 1800" on a scale of one inch by 40 feet.)

216 Q. Whether or not the workings shown on this plan represent mine explorations and workings under the property of the Parrot Silver & Copper Company?

A. Some of the workings under the Parrot Company and others under the Steward, I should say the west half of the map is under the surface of the Steward ownership and the east half under the Parrot.

Before being employed by the Anaconda Copper Mining Company as book-keeper and head time-keeper I had worked in the High Ore mine in Butte, and before that I had been book-keeper for the De Lamar Gold Mining Company in Nevada. As General Manager of the Parrot Company my duties were to conduct the business and operations of the company and mining operations of the company; I was held responsible for the operations. I employed different parties to run the mining part of it,—engineers, and that necessitated my informing myself carefully as to the various properties of the company, and I was as familiar with them during my management of them as any living person. The Parrot smelter at Butte was dismantled in part upon my recommendation. After I became manager, and before any definite action was taken in regard to the Gaylord plant, I visited it, went over it to look it over and see what it

217 amounted to. I would not say it was fairly well towards completion. A great deal of work had been done there; the concentrator had been built; still, the machinery—they did not have all the machinery there; they did not have any converters there; they did not have any reverberatories there; the buildings were up; they had some carpenter shops and blacksmith shops; the plant was in process of construction. The smelter in process of construction at Gaylord had been discontinued under the management of Mr. Grant. Mr. Gaylord was the man who started that smelter mostly; it was Grant, when he became manager, discontinued work on it; we looked on it as a sort of a white elephant on the hands of the company. The Parrot smelter did not have any advantage from the character of its water supply; it was a distinct detriment. I would think the Butte and Boston smelter at Butte had the advantage of water supply because they were further up the creek, and you understand the waters of Silver Bow Creek are not very desirable on ac-

count of the copper and precipitates and tailings and mud and slimes that accumulate and come down there."

The witness produced certain maps showing the workings beneath the claims of the Parrot Company, a portion of the workings having been made from the Parrot mine and the others from the Stewart mine of W. A. Clark, which maps were introduced in evidence by complainants and marked exhibits L, M, N, O and P.

Cross-examination :

I lived at Virginia City, Nevada, for twenty-eight years; the chief industry there was mining; while there I worked around the mines; it was a mining community just the same as Butte; I had a
218 very fair general knowledge of mining. In addition to my employment by others, I have spent quite a good deal of money in the mining business; interested in some mines now. I have been interested directly in mining operations in Montana, Arizona, Flathead County, Montana, Jefferson County, Montana.

At the time I took hold of the Parrot property the construction of the Gaylord plant had been discontinued something like a year before, under the management of Mr. Robert D. Grant. The work of construction at Gaylord was started under Mr. J. E. Gaylord as manager of the Parrot Company. Mr. Grant was a son-in-law of Mr. Gaylord. When Mr. Grant ordered the construction discontinued at Gaylord, he had an investigation made as to the advisability of continuing the work by Mr. A. J. Shoemaker, superintendent of the Parrot smelter, an experienced smelter operator, supposed to be one of the finest in the country; he had been with the Parrot Company a number of years as superintendent of the Parrot smelter. Mr. Shoemaker made a report, and I think it was almost wholly on Mr. Shoemaker's report that Mr. Grant had the completion of the Gaylord plant discontinued. When I came into the management I took this matter up with Mr. Grant and Mr. Shoemaker and discussed it with them, with a view to informing myself as to the advisability of doing anything further at Gaylord. The result of my investigation was that we looked upon the investment over there as a sort of white elephant; they spent a great deal of money over there, and it would have taken a great deal more to have finished the smelter; the location was not an advantageous one; it was over the ridge of the main range of the Rocky Mountains;

it would cost them about seventy-five cents a ton to haul the
219 ore from Butte over to this smelter. The distance from

Butte to Gaylord by railroad would be about 38 or 39 miles; in addition to the haulage over the mountain range, the distance the ores would have to be taken, the other objection to the Gaylord plant was that it was not constructed on the best lines for a smelter, it did not take advantage of gravity; from the concentrator they would have to elevate their concentrates up to the reverberatories, and they had a long ditch there, I think a ditch about seventeen miles long, that supplied water to this plant, that used to freeze up in the winter time, and places it used to cave; it would take a good deal of money to keep this ditch in repair; there was not a

constant water supply; a supply all the year round is necessary for reduction operations. As a result of all of my investigations my best judgment was that we should not spend any more money out at Gaylord. The lands and the water were afterwards sold to Mr. Kroyer. The machinery that was there was disposed of, a part to the A. C. M. Company, and we sold some electrical machinery to the Livingston Power Company,—electric Light Company; on the sales of machinery I investigated the price that we should receive; we got fair prices for it and were paid the amounts; the books will show all of that. The lands and water were sold to Mr. Kroyer for \$100,000.00; prior to the sale of the Parrot lands and water-rights I had made efforts to dispose of this property to others, and had negotiations with other purchasers, or probable purchasers; we had two propositions to purchase it, one for \$50,000.00 and one for \$60,000.00; the property over there was costing us to maintain between four and five thousand dollars a year, and we were not reaping any benefit. We made up our minds if we could get rid of it at a reasonable price we would do so, and the best price we could
220 get was \$100,000.00, and we sold it; before selling it I had a practical farming man go over the property and appraise it, and taking all of my investigations I think we got a very good price for the property. As to the old Parrot smelter that was operating here in Butte when I took hold of the plant, we operated from May, 1899, to September, 1899; the location of the old smelter as to slag and tailings dump, it was pretty well surrounded with slag and tailings dumps; a smelter cannot operate without having dumping ground for such purposes; the Parrot smelter was hampered and restricted in its dumping ground, both for slag and tailings; the available ground had all become filled up from their previous operations; the water for the operation was very bad; we got water from Silver Bow Creek; we used to get some city water for our boilers; we had to pump some water from Blacktail Creek, and the water from Silver Bow Creek never was satisfactory in any way; it contained slimes and slums and tailings,—acid in the water that would eat out the machinery. The construction of the plant itself and the arrangement of the machinery in the plant, and everything of that kind, was not such as would afford economical operations. The Parrot smelter as it was originally built, I think was about a fifty ton smelter, and it was gradually increased and increased until finally it became five hundred tons; and the buildings were put up,—a reverberatory on one side of the plant, and probably years afterwards they built another and it was put away on the other side. I think it would have been cheaper to have torn down the old smelter and built a new one than to try to operate the old smelter. It was an old
221 plant. It was antiquated and crowded for room, and the water supply wasn't good, and I think the former owners of the Parrot Company realized that when they started to build this new smelter, they realized they had to have a new smelter, and I think that was their object in going over to Gaylord to try and fix one up there. The arrangements as to treating ore from the time that the old Parrot smelter was discontinued and the ore smelted at Anaconda, first at the old works of the Anaconda Company, and

subsequently at what are known as the Washoe works, from my knowledge of the operations it was decidedly to the interest of the Parrot Company to make that change; it was to the interest of the Parrot Company and stockholders to make that change in the reduction of ores.

At the time of the issuance of the circular letters of April 7, 1910, and March 31, 1910, the books of the Parrot Company showed generally what mining company books show; the condition of the mine and we had statements of all ore reserves in the mine, and we had maps, assay reports; stope sheets, showing the ore extracted, and estimates of ore reserves from new developments. From the maps and records there in the office, the records I were familiar with at that time, one could obtain a very accurate idea of the condition of the Parrot Company's mines. At the time I took over the management of the Parrot property in 1899, the Parrot shaft was sunk to the 1000 foot level; we afterwards sunk it to the 2100, and developed every level as we went along; mined the ore at the 800, 900 and 700. We used every endeavor that we possibly could to find ore in the Parrot ground; we ran crosscuts to the west end line of the claim on the 1200 and 1300,—not crosscuts, but lateral

drifts,—crosscutted those drifts from time to time; we did not find any ore out west, in the western part of the claim on those lower levels. The levels immediately below the 1000, down to the 1300, 1400 and 1500 foot levels, showed there was a big fault vein came in there and the ledge at the 1400 was very strongly mineralized; we got a body of ore there somewhere in the neighborhood of seventy feet wide; we extracted the ore; the same on the 15; as we got deeper the ore got lean on the lower levels; the last four or five years the Parrot mine was operated the best ore we could get was less than three percent, not considered commercial ore; in fact, we ran behind right along; we could not make it pay. The Parrot vein in depth was lost going west. At the time we took hold of the property the Little Minah mine was down to the 800 foot level; it had not been operated for a long time prior to my taking the management; we went over there and opened up the property and sunk it down to the 1500; before that it had been closed down and practically abandoned; we sunk the shaft to the 1500 and we crosscutted each vein; we found some ore there on some of the levels and we took it out. When I took hold of the property, the Oro Butte and Moscow were practically abandoned; we spent a good deal of money prospecting over there around the Moscow and Oro Butte; we went into the adjoining shaft, into the Poulin, the 600 foot level, thinking as we got deeper we might find some ore there, and we drifted into those claims, but we did not find any commercial ore. The silver group of claims out at Burlington, the Champion and the Empire State and Agnostic are about four or five miles west of the Parrot main property; no work had been prosecuted on those claims since the early years; they are what are known as silver bearing mines, not copper; we went out there a few times and

223 looked them over, and we did not think it advisable to spend any money to develop them or do anything with them; I

don't think there was anything done during our administration. The only other mining ground that the Parrot had, mining claims, were a couple of claims, the Last Hope and the Copper Reef, out near the Chinese Gardens, about three or four miles south and east of the developed or known copper bearing portion of the copper district; they were not developed claims; I think we sank a shaft there about a hundred feet; there was some ore showing on the surface, some oxidized ore, that looked as though there might be something there, and we sank a shaft a hundred feet and prospected a little to see if it amounted to anything, and down there we found quite a good deal of water, and we did not see any sign of ore, so we quit that work.

These maps of the different levels of the Parrot mine tell the story of the Parrot ore body very clearly as to their extent and working. During my entire administration we did everything we could to advance the interests of the Parrot Company; every man connected with the company worked for the company's interest; in prospecting the mine we were just as anxious to get ore as anybody else could have been, because we naturally had pride in making a showing; we spent lots of money in development work, hundreds of thousands of dollars.

Q. Now, did you mean to be understood, in reply to Mr. French, that the Parrot mine, that the Parrot mine, was absolutely worthless at that time, or that its value was largely decreased by the showing as to the low grade ore in the lower depths?

A. Its value had decreased, and we had been unable to make it pay for a number of years, and been running behind on it. We did everything in the world we could to find pay ore, and were
224 not able to do it. Of course, I wouldn't say that the Parrot mine is worthless; further development may show they may have some ore down in the lower levels, but they hadn't up to this time. The lower levels were very lean, low grade, but I don't think anybody could say that the mine is practically worthless, because even from a geological—not a geological—but a geographical location, it is worth something.

Considering all of the development of the Parrot Mine and the other properties, I considered the price at which we were recommending this sale to the Anaconda Company a very good price. During all of the years that I was connected with the Parrot Company, I never knew of any instance of anything that was done in the management or operation of the Parrot Company which was not in the interest of that company or its stockholders. In regard to the Parrot Company in any manner being discriminated against, or anything done which tended to injure it and to favor the Anaconda Copper Mining Company, or any other company or operator in this district, I would say that we were more favored than discriminated against.

The difference in the rate to the Gaylord smelter and to the Washoe Smelter would be about sixty cents a ton in favor of the Washoe smelter. At times we shipped as high as a thousand tons a day from the Parrot. We determined that the Gaylord plant was not available for a smelter site; they had a ditch over these seven-

teen miles long that probably cost them \$125,000.00, that you could not get a counterfeit nickel for; and they had started to build a concentrator; they had shipped a lot of stone in there, for foundations; I think probably the concentrator itself must have cost in the neighborhood of a hundred thousand dollars. You could
225 not take that stone out of the foundations after it had been built and ship it any other place and make anything out of it. You could not sell it on the ground for anything. There was some of the ground was valuable over there for agricultural purposes, and I think probably that was the only valuable thing that was left over at Gaylord. We had a stack there that cost about thirty-five thousand dollars; that contained a lot of brick; they blew that stack down and sold the brick. There is an office over there now that cost ten thousand dollars; it would not be any good any place else; you could not move it—a brick office; that is where those shrinkages came. The smelter was not completed; it would require an expenditure of probably seven hundred thousand dollars more.

226 *Deposition of Roy S. Alley (a Witness for Complainants).*

My name is Roy S. Alley. I am thirty-six years of age. I live in Butte and am secretary to Mr. John D. Ryan. I am the Roy S. Alley who was one of the incorporators of the Red Metal Mining Company and at that time held shares in the company, not for myself, I imagine for Mr. Ryan. That company was incorporated in February 1906. The capital stock was something like \$11,000,000. I don't know what the assets were or whether it took over any property of the Parrot Silver & Copper Company. It is my recollection they took over the Heinze property so called and that that was the purpose of the organization. The assets of the Red Metal Company were finally taken over by the Anaconda Company I think.

227 *Deposition of John Gillie (Taken on Behalf of Complainant).*

My name is John Gillie. I am fifty-three years of age and live in Butte, Montana. Up to 1900 I was engaged in general mining engineering practice in this locality and was employed by practically all the companies and individuals in the camp and made outside examinations covering the Rocky Mountain region and Alaska. I got my professional education at Ottawa College, Canada. The work comprised all of the work in connection with mines, starting with the prospecting, location, development, examination and selling of ores and generally all work connected with mining. In addition to that I operated on my own account as a lessee and owner of properties during a good deal of that time. Before 1899 I was employed by the Parrot Silver & Copper Company at different times. Only, as some of the managers would require work to be done, I did some of it. The nature of this work was looking up lands and claims in this locality, the condition, and some surveys in the Parrot

mine. I became familiar in a general way with the Parrot properties, and made maps of some portions of them. I am now and have been since 1910 General Superintendent of Mines of the Anaconda Copper Mining Company. That includes the Parrot property. I made a verbal report to Mr. Marcus Daly just prior to April 1899, of the condition and value of the Parrot mining properties. I do not know whether or not it was on my report that the Farrell interest was bought. I reported to Mr. Daly and some time afterward the Parrot property was purchased. I do not know of anybody else making a report either to Mr. Daly or to Mr. Burrage or to Mr. Rogers. In substance I reported to Mr. Daly that the Parrot mine was then at the 1,000 level, that the cream of the
228 property had been already taken and that at that time in order to show a fair and reasonable production they were mining ores around the shaft. I further reported that the vein was continuous and while the rich zone had been extracted the property would have considerable merit. It was still a valuable property but the rich part of it had already been worked and extracted.

(Witness is shown and recognizes map Exhibit L, showing boundaries of the Parrot Silver & Copper Company's properties.)

Exterior boundaries of the property owned by the Parrot Company are correctly shown on this map and are about the same as at the time of the sale to the Anaconda Company of its properties in 1910. I was present at the taking of testimony in this case when there was some examination of maps here, one of which is Exhibit P, on the east end of which are shown the Parrot workings on the 1,200, 1,300, 1,400 and 1,500 level; and also on the west end there was also shown some of the workings from the Steward shaft. I was present also when certain questions were asked concerning the working of the Parrot mine on the 1,500, 1,600, 1,700 and 1,800 levels on the east end and showing more specifically the workings of the Parrot Company end on the west end showing the workings from the Steward shaft or Steward mine shaft. In ascending to the surface the general course taken by these workings was to the north, and if continued up with that general dip there would be a point say at the 1,200 level and 800 level of the Steward workings where they would be under the surface of the Parrot Company's property as shown on this map in the west end. I have knowledge that these workings did continue up for some distance. The first cross cut nearest to the surface has been run from the Steward shaft under the surface of the Parrot ground in the neighborhood of the 1,000 level. I know of a considerable amount of ore having been heretofore stoped out of the workings there on the west end of
229 the Parrot in these Steward workings which would be under the surface of the Parrot ground, and I know that there are at present considerable ore bodies there. We are in control of the Steward shaft but it is generally supposed to be worked out down to the deeper levels in the neighborhood of the 1,400 and 1,500. I know we are extracting considerable ore from the Steward mine but at the present time I know there is very little coming out of the Steward that is from actually under the surface of the Parrot ground.

We are finding considerable ore bodies on the lower level, say around near the 2,100, that is being extracted and hoisted through the Steward shaft. We have been carrying on active mining operations through the Steward shaft practically since we took charge of the property in June, 1910. Before the purchase of the Steward property or Clark property, we investigated the workings there by permission of the Original Consolidated Mining Company there and made claim to ores that they were working there. Professor Kemp of Columbia College was employed to make an investigation of the ownership of the ores that were claimed by the Clark people through the Steward ownership. The purpose of having Mr. Kemp make this examination and report was that the officers of the Parrot Company and myself included believed that the ores that Mr. Clark was working, at least some of them, rightly belonged to the Parrot Company and it was in that connection in order to determine the actual facts and assert our claim properly that Mr. Kemp and others were employed to make these examinations. This report was probably made to Mr. B. B. Thayer, President of the Anaconda Company. All these reports and examinations were made in reference to the ore being extracted here in the Steward workings by Mr. Clark of the Original Company and were made because Parrot Company believed that they had substantial rights to some of the ore being extracted by Mr. Clark.

Parrot Company asserted claim of ownership to the ore bodies that are shown on Exhibits M and P. We made claim to ore bodies at these greater depths clean to the west end of the Parrot ground in the Steward vein. We believe that these claims were substantiated by the geologists who were employed. We believe we were right. Of course we were disputed. We made claim on the ground that this was the Parrot vein in its westerly extension, I mean mining rights that were united or connected with veins that went clean to the surface within the Parrot ground,—the Parrot claim. We had evidence to justify us in believing that to be the fact. We were, to some extent, very certain of it.

I do not know from my own personal knowledge why work on the Gaylord plant was suspended. There was nobody present at the time I made the report to Mr. Daly of the condition of the Parrot mine in 1898 except Mr. Daly and myself. Mr. Daly is now dead and nobody living now knows what transpired at that conversation except myself.

Q. You knew within six months or a year after you had this conversation, whatever it was, with Mr. Daly in which you told him in substance that the mine had petered out that the interests which he represented paid something like \$4,500,000 for half or substantially half of the stock of the Parrot Company, did you not?

A. I learned that he made the purchase. I don't know whether I ever knew the exact figures. I didn't tell him that it was petered out but I told him that it was not the old mine of years before.

Q. Is that all you told him.

231 A. That the cream from it was gone. No, I told him that they were mining their best ores from the shaft pillars and that it was my opinion it was necessary to do that to keep up the grade of their ore at that time. I do not remember telling him anything else. As far as I know he had no other information than that given him by me as a basis upon which the purchase was ultimately made, but would say that he had complete information.

On the whole, I will not say that my report to him was a tolerably encouraging one with reference to the future of the Parrot mine.

Q. Mr. Daly was not the kind of a man who ordinarily gave something for nothing, was he?

232 A. No, not usually. He was a pretty intelligent man. "The Parrot smelter was one of the first smelters in Butte;

I remember when it was built; it was being built in 1880, and started to operate in the latter part of 1881 or '2. Afterwards the Parrot concentrator and smelter were enlarged and improved,—say 1885, '6 or '7, sometime in the '80's. In 1899 or thereabouts, it was not in the best condition it had ever been in; it was in its best condition about five or six years prior to that time; in the meantime it was allowed to deteriorate and run down, they having in mind all the time the erection of a new plant at some other place. All of the smelters here in Butte, including the Parrot, used the waters of Silver Bow Creek, and it was very poor water; it contained various impurities; including acid, which was ruinous to the machinery. In 1899 the Parrot smelter was a plant that was just possible to be operated; it had been allowed to deteriorate and run down to such an extent that it was not in as good a condition or as good a plant as when it started out; in addition to which a great many changes had been made in the reduction of ores which had not been adopted in this plant.

I visited the Gaylord smelting site many times. The construction of that plant was abandoned sometime in 1897,—the latter part of 1897. At this time the Amalgamated Copper Company had not been formed. The reason that I reported to Mr. Daly that the cream of the Parrot properties had been taken out was that I had practically followed the mining operations conducted in the Parrot mine from 1881 down to that time, and knew pretty well what they were doing, or very well what they were doing in the amount of extraction and the grade of the ores. In the upper levels of the Parrot mine, say in the vicinity of the 500 down to the 800, there was a continuous body of ore from the east end line of the property to the west end line, probably seventeen or eighteen hundred feet long, very rich, very strong, carrying high grade copper and high grade silver. When they reached the 1000, which was at that time—1899—it showed pretty well around the vicinity of the shaft and easterly from there. Going westerly it showed a material

233 weakening, so that the ore body was very much shorter and very much less than seen in the upper workings. The Parrot shaft is located near the easterly end of the property. At that time ore had been mined out extensively between the 1,000 to

the surface. There was a shaft pillar or the ore in the vein in the vicinity of the shaft had been left at the different levels, and at the time of my examination they were then taking out some of this shaft pillar ore. It is not only good practice, but this shaft pillar ore must be left if you are going to keep the shaft in working condition. The removal of the ore at that time was under the management of Mr. Grant, and has caused us trouble ever since; we have had to retimber and repair that shaft once or twice a year ever since. Subsequent to that time, 1899, the Parrot shaft was sunk to a depth of 2,100 feet; this development early began to show that I was pretty nearly right, for when they reached the 1,200 foot level of the Parrot and crosscut to the vein, there was some pretty good ore. Starting west, in a very few hundred feet we found that the vein had split up, broke, and we drifted probably a thousand feet westerly on stringers, or what we could find of the vein, crosscut at intervals, and we could not find values, payable values. Going to the 1,300 we found the same condition. Going to the 1,400 and 1,500, we found the same condition. In the vicinity of the shaft and easterly from there, there was ore, but going westerly it has always been poor. These maps that have been introduced disclose in the workings there shown the diminution in the extent of the ore bodies as progress was made westerly from the shaft on the lower levels. In my opinion in the depths to the west of the Parrot workings we will not find payable ore.

In regard to the controversy between the Original Consolidated Mining Company, the Washoe Copper Company and the Parrot Company, as to the ownership of certain ores, this controversy had never been decided out of court and it was never adjudicated in court. As shown by the maps, very little of the ore in controversy had been taken from beneath the surface of the Parrot ground. Concerning the ore body that had been worked from the Stewart shaft, from the upper workings of the Stewart mine, the Parrot Company never laid claim to these ore bodies.

235 *Deposition of Walter H. Weed (a Witness for Complainants).*

My name is Walter H. Weed. I am fifty years of age. My last legal residence was in Butte. I am a mining engineer and mining geologist. I graduated from the School of Mines, Columbia University in 1883 with the degree of Engineer of Mines. I was subsequently employed as a geologist by the United States Geological Survey, first in the Yellowstone Park, afterwards in charge of geological work in Montana; subsequently I investigated various mining districts in detail of which reports were written embracing Neihart, Elkhorn, Marysville and Butte, all Montana districts. I was at one time engaged in making examinations from a geological standpoint of the mines of Butte. The first was in 1896 as Associate of Professor S. F. Emmons, who at that time was in charge of the work. This examination was made for the United States

Geological Survey. A re-examination was made in 1898, extended over various years and was finally completed I should say, roughly speaking, eight years ago. This covered a period of something like four years. I suppose half of the time was given to the Butte work. My examination was very thorough. Every available opening, every accessible opening was investigated and included the district known as the Parrot Mine and adjoining properties. I have been doing what might be called mining work at least since 1894 and perhaps a little earlier. I have made many examinations in Mexico, Nicaragua, in Haiti and throughout various mining districts of the United States, British Columbia, Canada and Newfoundland. The greater part of the information obtained by my examinations made under the supervision and direction of the Geological Survey, have been published in the form of printed reports under the supervision of the government. I made examinations of the ore bodies and geological conditions in the vicinity of the Parrot mine other than those which were made under government supervision, at the request of Senator W. A. Clark. It was made first because there was a controversy in regard to the ore bodies in the Original Mine as to the ownership of those ore bodies lying between the Parrot and the Original and subsequently in regard to the ownership of ore bodies developed in what was known as the Steward Mine, but ore bodies lying beneath the Parrot surface as I recall it. Roughly speaking these investigations were made in the latter part of 1909 and 1910. They involved underground work and the study of maps and were as thorough as possible to go into at that time. The properties examined were portions of Parrot workings, the west Steward workings and the Original workings. It was in reference to some dispute existing between the different ownerships and in view of possible prospective litigation. The ore bodies examined were those developed in the Steward Mine in the deeper levels. I have been down through the west Steward or the Steward workings at 1,400 and 1,500 Steward and stoped above those levels and between the levels and my recollection is that I was also in this 12-15 drift of the Parrot and 12-60 Parrot and probably on quite a number of other workings around there. This was the main point that we were arguing about. I made somewhat careful examination of the workings of the west Steward. The 1,400 is under the surface of what I believe to be the Parrot ground. The 1,500 passes partially under the Washoe. The general dip or trend of the vein is from perpendicular toward the south at a fairly steep angle. That is approximately the general dip of the Steward vein in the deeper levels. On many of the levels there were stopes that run up five or six floors high and there were raises connected through, but as to the approximate quantity I couldn't tell you. These ore bodies were of very great value. I should consider them probably worth at least \$2,000,000 or \$3,000,000. The condition was such that I consider there was every probability of uncovering ore in greater depths.

237 It was a large fault vein abundantly mineralized and a vein of a character in which one would expect to find ore continued downward to great depth. In making these examina-

tions I met representatives of the Parrot or Amalgamated people who assumed to represent the other side of the controversy, Mr. Sales and Mr. Pillger. Mr. Sales represented the Amalgamated or Parrot as a geologist. His contention was that the Parrot Company owned these ore bodies of west Steward mine. The contention was on the ground that the Parrot vein split going westward and that the north split ran into and connected with the big stopes of the west Steward mine. There were raises and stopes which furnished a partial connection which gave basis for the ground that the north branch of the Parrot ledge could be used to apex those ore bodies. On the other hand the west Steward had certain workings which in turn might be used to apex the ore bodies in their ground. Mr. Sales' contention was that there was a vein which we called the north branch of the Parrot, an old vein showing quartz and pyrite, that might be called the north branch of the Parrot which apexed within the Parrot ground and which gave the legal right on account of the older location of the Parrot claims to the ore bodies below. He contended that the veins, as I recall it, which split off into the Parrot could be carried right up into the Parrot ground and therefore that it carried with it the ore of the big ore bodies.

Mr. Sales and I were trying to reach an agreement as to the truth of the geological conditions in order to avoid, if possible, a lawsuit, believing that if we could agree on the geological facts and the correct interpretation of those facts, there would be no lawsuit. Mr. Sales' claim was one which I considered had not been proven, but which development work might or might not prove, there being more development work needed to sustain it; it needed further development work to sustain or disprove it. I advised my client that it was a dangerous claim; I considered that both claims had merit; that is to say, I considered that neither side had proved their case. I advised my client that the Sales claim had merit enough to warrant new work. The Parrot vein going westerly was cut off
 238 by a fault known as the Blue Vein. On the lower levels I do not think the development was sufficient to show the real situation as to ore bodies,—that the development was not sufficient to the west.

Cross-examination:

As a matter of fact, the situation as to the claims of the Clark and Parrot people presented a pretty complicated set of geological facts, presented two divergent views. I advised Senator Clark that your claim was dangerous to his interests, that it was not proven, but that it was sufficiently strong to be considered very seriously. Mr. Sales contended that the ore belonged to his side just as I tried to make him think the other thing. In talking with Mr. C. F. Kelley, representing the Parrot Company, I told him that I believed Senator Clark could prove an apex. My recollection is that I told him that I believed Senator Clark had a good case for court, but a good case for court does not mean a good geological case. There was a controversy in which the Parrot Company felt and believed that they were justified in making, and on the other hand, I believed

that Senator Clark was justified in maintaining their ownership to these ore bodies. Mr. Sales and I never reached any agreement. Mr. Pyle, who is an engineer and geologist for Mr. Clark, also participated in the matters. I don't recall that Mr. Pyle ever allowed there was any uncertainty about the Clark claim to the ore bodies. You could correlate the vein up until it got north of the Parrot surface. This Stewart fault vein was west of the Clear Grit vein; when you got east of the Clear Grit vein my recollection is not definite. I don't think Mr. Sales or either of us questioned that these ore bodies in the Stewart, disclosed in the 17 to the 2,100, could be followed upward to an apex outside of the Parrot ground, but his contention was that there was also a clear cut and definite connection up into the Parrot ground.

239 *Deposition of J. C. Pyle (a Witness for Complainants).*

My name is J. C. Pyle. I live in Butte and am forty-eight years of age. I have been in the employ of Senator Clark and the Original Consolidated Mining Company. I had charge of the development work in the Steward Mine for a number of years prior to the transfer to the Anaconda Company; I should say about seven years. I was in charge when they were extracting ore from the different levels from about the 1,100 to about the 2,000. We were shipping from 300 to 350 tons a day from these workings. It was partly first-class and partly second-class ore. The greater part of it was hoisted through the Steward shaft. I terminated my supervision over these mining operations about the first of June 1910 when the property passed out of the hands of Senator Clark to the Anaconda Copper Mining Company. The bottom level at that time was the 2,100. A cross-cut had been run through the Steward vein, something like 15 or 20 feet in width, and drifts both ways had been run a short distance, I think about 60 feet each way. The 1900 was the next level above the 2,100. That level was opened for a length of about 600 feet. The vein on the 1,900 varied from about 15 feet to 30 feet of ore that could be mined. My measurement commenced at about the west end of the Parrot ground and the stopes that were made on the Steward vein below the 900 level were all beneath the surface of the Parrot claim. The general dip of this vein from 800 downward was southerly, varying from nearly vertical to 60 degrees.

240 Between the 700 and 800 the vein is more nearly vertical. I was aware that the Parrot Company claimed the ownership of a portion of the Stewart ore bodies that were being mined beneath the surface of their claim. Work was interrupted several times because, as I understood it, of a claim on the part of the Parrot Company to the ownership of the ore that was being mined. The ore chute for a length of from 600 to 800 feet deep and from 10 to 40 feet in width extending from the 800 level down to the 1,900, indicates to me that in all probability the vein with the same content would continue downward to a considerable depth and would probably carry the same class of material in which case the ore body

would be of great value below the lowest level as developed during the time that I was in charge of the development work, and, in case it was proven to continue to a depth of 3,000 or 3,500 feet, would be worth many millions of dollars.

Comparatively little of the ore bodies that I have testified to in this Stewart vein or fault are beneath the property or property lines of the Parrot Company. I am familiar with the Parrot vein and the workings upon it as distinguished from the Stewart fault vein. I have had full opportunity to examine all workings that disclosed its physical condition underground. The Parrot vein had been continuously stoped down to the 1,000 foot level, extending from the east end line of the Colusa Parrot to the west end line of the Original; that condition was not true below the 1,000 of the Parrot in the western portion of the vein. The westerly workings of the Parrot below the 1,000, or the 1,200 and 1,300 lateral drifts and crosscuts therefrom, either the cross-cuts did not reach the Parrot vein, or the Parrot vein had gone out. This large continuously mineralized ore body did not exist, although it was hunted for; they not only hunted for it in the Parrot, but we did a lot of work looking for it in the Original; crosscuts were driven south; we went south about half a mile. The work that had been done by means of crosscuts on those levels down as far as the 1,500 was sufficient to demonstrate the condition of the ground in that particular region, and it demonstrated that

241 there was little if any deposit in the so-called Parrot vein outside of where it was also worked jointly with the so-called Stewart vein. The ore was too poor to work, and was profitless. Now, below the 1,300 foot level, wherever we found ore in that vicinity, the ore was in what we called the Stewart Fault vein, and it was my opinion that the ore in the Stewart fault vein belonged to that vein exclusively, and had no connection with the Parrot lode, and that is still my opinion. The map, cross section marked B-B, which is handed me I recognize as a cross section showing the Stewart Fault vein, and the Parrot vein, taken along the line, not far from the Original No. 6 shaft. It purports to show the dip of the Stewart Fault vein and the Parrot vein respectively from the surface down to the 1,900 of the Stewart and the 1,200 of the Parrot; the two veins are colored, one red and the other yellow, on this section; the red is the Stewart fault vein, and the yellow is the Parrot vein; this section purports to show the crossing of the veins on the dip from the apex of the Stewart fault vein in the Stewart claim, through its side line, through the side line plane of the Kanuck, Rialto and Parrot; it purports to show the apex of the Parrot vein from the surface down to the 1,200, and shows the veins absolutely separate and distinct. In my opinion it accurately represents my idea of the structure of these two veins."

(This cross section B-B was introduced in evidence, over the objection of complainants, as being immaterial as to anything except showing the Stewart vein, and the said copy of cross section B-B so introduced in evidence as defendants' exhibit 2 is hereby
242 made a part thereof, and the original map will be certified as a part of the record upon any appeal herein.)

"The apex of that vein was within the Stewart side line and north of the Parrot property. This map, cross section A-A also shows the Stewart fault vein. As shown on this cross section the apex of the vein is within the Stewart claim at the surface. This cross section A-A accurately represents the respective positions of the Parrot and Stewart veins, to the best of my knowledge and belief; it was made by me and for the purpose of showing the contention of the Original Consolidated Company, and it was furnished to the Parrot Company."

(This cross section, subject to the same objection of the complainants, was received by the Examiner and marked defendants' exhibit 3, and is hereby referred to and made part hereof, and will be certified as part of the record upon any appeal herein.)

"This map, cross section C-C, also accurately represents the position of the Stewart Fault vein in my opinion".

(This cross section was offered in evidence subject to the same objection by complainants, and was marked defendants' exhibit 4, and is hereby referred to and made a part hereof, and will be certified and made part of the record upon any appeal herein.)

"It was and is my opinion that the Stewart ore bodies, to which the Parrot Company made some claim, lay in a vein that apexed in the Stewart claim, and that the Parrot Company had no interest therein or claim thereto."

243 *"Deposition of Sidney Z. Mitchell, a Witness for Complainants.*

I am a banker by occupation, reside in New York City; I am a director in the Madison River Power Company and the Butte Electric & Power Company. We bought some land and water-rights and water power property from the Parrot Company; the property was purchased in the name of Mr. Kroyer for our company. We paid \$100,000.00 for the property. The property was not worth \$100,000.00; we would be glad to sell it at a less figure. When we bought it we thought we were going to be able to get more water through the canal than they had been able to get theretofore, and after we got to working it we found that that was absolutely impracticable. We could not get more water through the canal than had been put there theretofore, because the canal banks would not stand it; they would wash out and cut out, so that we could not keep the stream with increased force within the banks of the canal, and in the winter time, in the cold season, when we were shortest of water in all of our plants, the ditch froze up entirely and we could not get any water through, and the plant was absolutely useless at the time we needed it most, and we got no real working value out of it, and it has been a great expense to us; it is over a year since it has been operated; how much longer I cannot tell you."

43. Also add to the appellants' said statement of the portions of

the record to be incorporated in the record upon appeal, the following portions of the deposition of Arthur H. Pogson:

"Deposition of Arthur H. Pogson, a Witness for Complainants.

My age is thirty-eight, occupation certified public accountant, member of the firm of Pogson, Peloubet & Company, independent auditors for the Parrot Silver & Copper Company. We first had to do with the books of the Parrot Silver & Copper Company in a general way in December, 1901. In 1901, or in January or February, 1902, shortly after our appointment, we proceeded to make an audit of all the books of the company from about May first, 1898, to date. A New York set of books was started for the Parrot Company as of June, 1904; balances transferred from the Butte books which was up to that time the head office of the company. We found that these books were opened with a balance which was incorrect by \$250,000.00; they were opened with a balance of \$895,592.28, which balance was overstated by \$250,000.00, which represented depreciation,—transferred from the smelter account to the mine property account, with an explanation on the books at the time that it was a depreciation. That was not the only change that we made in the former books and the balance from the former books. Nothing else was taken off but an entry was made transferring from the Butte Smelter Account the real estate of the company in Butte, exclusive of the mining lands, so that the mine property would include all the mineral land, other land, if any, and millsites of the company. This amount was \$132,598.96; after this entry was made and two small correcting entries, the adjusted book values of the mines and mining claims of the company stood at \$767,133.61, which is the figure that would have shown on the books at the time the transfer was made if the records of the company in the West had been correctly kept prior to 1898; that was to correct book values,—to correct the book figures so as to correctly show the depreciation and loss through the old smelter and reduction plant, the Gaylord reduction plant; the depreciation on the buildings, machinery and reduction works was placed at \$830,275.90; other items of depreciation were made so that the books would correctly show the condition of the company's property. As the account stood in June, 1904, the books showed the capital stock of the Bridgeport Copper Company was carried at \$498,500.00, but the book value of this stock, as shown by the Bridgeport Copper Company's book as of April 30, 1898, was \$193,222.00; so that an entry was necessary writing this Bridgeport Copper Company's stock down to its worth, as shown by the Bridgeport Copper Company's books, which entry was simply a writing off of the difference, \$305,178.00."

44. Also add to the appellants' said statement of the portions of the record to be included in the record upon appeal, the following portions of the evidence of URBAN H. BROUGHTON, a witness for complainants:

"Deposition of Urban H. Broughton, a Witness for Complainants.

During the time that I was connected with the United Metals Selling Company, I was also its General Manager for a number of years. I was familiar with the charges made for refining and selling the copper of that company, during the period from 1901 to 1911. During that period there was no greater charge made for refining and selling the product of the Parrot Company than for any other of the Butte companies. That is true of all electrolytic companies, no matter from what source it is derived; substantially the same charges are made for refining and selling the copper, except as the contracts expired, each contract would take a new rate, which has always been lower; that is, there has been a gradual reduction in the rate for refining since 1901, as the art was
 246 very crude in 1901, and as it was developed it could afford to reduce the rate of refining. As to a refinery which treats the product of a large number of different companies doing the work at a lower cost than a refinery which would treat the product of only one company, the latter is quite impossible. There is no mine in the world large enough to refine its own product as economically as when it forms a part of a large company. In 1901 the cost of selling the Parrot copper was about $2\frac{1}{2}$ per cent; that included a guarantee to the customer; somewhere about 1905, according to my recollection, this was reduced to $1\frac{1}{2}$ per cent, and two or three years ago a further reduction to one per cent was made."

"Deposition of William F. Battin, a Witness Called by Defendants.

I have already testified in this case and stated my experience as an accountant and my connection with Pogson, Peloubet & Company. I am familiar with the books and records of the Parrot Silver & Copper Company, particularly those that have been introduced in evidence here and used on my examination and that of Mr. Dillenbeck. I have examined these books and records for the period of five years prior to the closing down of the Bridgeport Refinery running as far back as June 1, 1895, and find that the cost to the Parrot Company for refining and selling that copper, for those purposes, was \$33.00 a ton; there is one charge there showing a greater amount
 247 in one instance, in the month of January, 1900, when the charge was \$35.00 a ton. The freight is stated separately and this charge does not include any freight charge on the pig copper or the copper produced by the Parrot Company, to the east. This charge of \$33.00 a ton is in addition to the freight and is simply for refining and selling. This was \$33.00 a ton of 2,000 pounds. My investigations covered the period from June 1, 1895, up to the time the shipments ceased,—approximately five years, and there was one entry each month, so there were probably between fifty and sixty entries."

46. Also include in the appellants' statement of portions of the record to be included in the record on appeal, the following portions

of the deposition of JOHN GILLIE, called as a witness by the defendants.

"I have already been sworn and testified as a witness on behalf of the complainants; I have lived in Butte, Montana, over thirty-one years. My time has been devoted to all kinds of mining engineering, particularly in this district, but I have made investigations over the Rocky Mountain region, and Mexico and also Alaska, and during that time have especially had an acquaintance with the properties formerly subsidiary to the Amalgamated, and now properties owned by the Anaconda Copper Mining Company. I have known the property, known as the Parrot Silver & Copper Company since 1881. Since 1900 I was general superintendent of operations of the Butte & Boston Consolidated Mining Company, and in 1901, general superintendent of mines of the subsidiary companies of the Amalgamated Company. I know the Gaylord plant, the partially constructed plant at Gaylord, Montana, started by the Parrot Company; that was started under the direction and management of J. E. Gay-

248 lord, General Manager of the Parrot Company. Mr. Grant was manager for one or two years before Mr. Gallwey took hold of it. The Gaylord plant was shut down by Mr. Grant. The Anaconda Copper Mining Company purchased certain of the material and machinery that had been at the Gaylord plant. It was to the advantage of the Parrot Company to dispose of this machinery and material; the same was valued by different engineers, and by the Purchasing Department, and the value or worth of the plant was based on the cost of a new building; that is, the cost of ordering new material from the east, wherever it was, less the additional expense of wrecking the buildings at Gaylord, with a slight reduction in case the material was not exactly suitable. The Anaconda Company paid the Parrot Company for all of this material and machinery, and paid fair prices. There was no other market for any considerable quantity of this machinery and material at this time.

I knew the old smelting plant of the Parrot Company in Butte from its erection until its dismantling; at its maximum it had a capacity of six to seven hundred tons a day; it was first started in 1881. It obtained its water from Silver Bow Creek, and also from a pumping station situated on Blacktail Deer creek, this pumping station being about one and one-half miles southwestly from the plant; they pumped water that distance. At the time the smelting operations ceased at the old Parrot smelter at Butte, and the ores were sent to Anaconda, the site of the old Parrot smelter was not at all suitable; the area for the storage of tailings and slag was very much congested, the water supply was getting more contaminated every year as other plants and mines discharging water into it increased from time to time. Railroads were building in the

249 vicinity, that ran through the yards of the plant, so that parts of the plant were on each side of the track, and the city was growing up practically around it, around three sides of it; so that it was not at all suitable for a smelting plant. Suitable and sufficient dumping facilities in connection with the operation of a plant like that are very important, and in this case they were entirely in-

adequate, and the area was congested, so that it was very expensive and very hard to secure dumping ground. The dumping ground, by reason of the building of railroads and the building up of the city, and coming in of other plants on the stream there, had changed very much from their early facilities when it was first started; that was an open area or district around Parrot in the earlier stages, but very few buildings and no rail tracks at all. The water facilities of the Parrot Company for the smelter at the time of the closing down of the plant were from Silver Bow Creek and from the pumping station on Blacktail Deer Creek; the water necessary for a copper reduction works is one of the most important items or matters to secure, and the supply at this place was from Silver Bow Creek; at that time the Parrot smelter was not at all up to date or modern, at the time of closing down, which of course made operating more expensive. For some years prior to its closing down they were allowing it to get out of repair and deteriorate, and only kept it up to the extent of being able to get along with it, for the reason that they knew they would have to move to a new site if they continued operations. In its earlier years it was one of the best smelters we knew of anywhere, the Parrot plant, but in later years it fell into this other condition, as I say, for want of room, and new improvements were being made in the art of

reducing ores that were not introduced here, for the reason
250 that they hadn't the facilities and they were expected to move.

There had been great progress and changes in the art of smelting, as to appliances and machinery and everything, from the time that the Parrot plant was regarded as a comparatively efficient plant here, until the time of its closing down. The Parrot plant at the latter time was not an efficient plant, and could not reduce economically or compare with any other modern plant. The Parrot Company either had to construct a new plant or make contracts with plants already in existence that were up to date and modern; it was not entirely feasible to construct a new plant or to reconstruct that plant on its then side; the plant itself could have been constructed but it could not have been operated successfully. It was not feasible and practical to construct and operate a new plant. When the Parrot plant was closed down, the ores were shipped to the Anaconda smelter at Anaconda and reduced at that plant. That plant was about seven or eight times as large as the old Parrot plant, and was reasonably modern or up to date, although the Anaconda plant at that time was also contemplating changes or the construction of other works. It was one of the best copper smelters of sulphide ores there was in the world and better than the Parrot plant; it had the best possible dumping and water facilities. The distance from the Anaconda smelter from the Parrot mine was about twenty five miles, down grade, direct railroad connections. The Parrot ores had been transported from the Parrot mine to the smelter at Butte by a little tramway operated by horses, and went around the contour of the hill, having a length of about one and one-half or one and three-quarters miles. That tramway was called the Summit Valley Railway Company; it was a separate organization, and they transported

the ores under contract; its contract for transporting from
251 the Parrot mine to the Parrot smelter at Butte was twenty-five cents a ton; to transport the ores to Anaconda at that time was fifteen cents a ton, and it was afterwards reduced to twelve cents; that reduction was before March, 1910. It was a good business decision for the Parrot Company to close down its smelter as it did in 1899, and have its ores reduced at the then smelter at Anaconda. The reduction of the Parrot ores at the old Anaconda plant continued until the new plant, the Washoe plant, was constructed in February, 1902; since that time the Parrot ores have been reduced at the Washoe plant, the new plant. That plant was the best and is the best copper smelting plant in the world, in every way, both as to facilities, as to its construction and its operation; its savings in comparison with the old Parrot plant, the savings of the metals in the ores is very much better, and the cost of operation is very much less; they get more metals from the ores shipped and at much less cost. The Parrot ores have been treated at the Washoe plant since its operation at Anaconda, the same as the other companies' ores, known as the Amalgamated Company; the ores were kept separate from all other ores until thoroughly sampled and weighed; one sample taken by the Anaconda Company and assayed, another duplicate sample sent to the Parrot Company's representative at Butte and assayed by their officers here, and if the assays did not check an umpire assay was had. After being assayed, the ores were put with the other ores and treated together; the ores were handled just the same as custom ores purchased from other independent shippers. The ores of the Parrot Company were treated at the Washoe plant at the actual cost of the operation, plus five percent interest on its proportionate part of the construction
252 cost of the plant. The Parrot ores carried their proportion of the total cost of operation at Anaconda, including this five percent interest. This arrangement was decidedly an advantageous one to the Parrot Company. The rates obtained and the costs obtained by the Parrot Company for its ores in that way were very much less and a much more advantageous arrangement than what its cost would have been if it continued its old plant; there was no comparison; it was so much more favorable at Anaconda, as well as the other arrangement or other advantages of having all these extraordinary charges subdivided on a large tonnage. The results obtained in this way by the Parrot Company could not have been approached in any way by the Parrot Company either by constructing a new plant in Butte or any other place,—a plant for its own ores; they might have been able to construct an equally good plant, but not having the tonnage to treat they could not have operated nearly as economically. One of the best evidences of the wisdom of shipping to Anaconda is seen in our sampling of the Parrot dump after the plant was abandoned. There were some hundreds of thousands of tons of tailings down there running nearly two percent in copper contents, and comparatively high in silver and gold; when we were shipping to Anaconda our own tailings never did exceed six-tenths of one percent, six to seven-tenths of one percent; those tailings have been leached and leached and copper extracted

at the present time. These old tailings dumps of the Parrot Company were worked after 1899, a portion in the tailings mill, reworked, a portion of them, for about a year, perhaps a year and a half, and then by leaching, and a larger and greater amount of the values extracted. There has been nothing in connection with the closing down of the old Parrot smelter here, and the operation and reduction of the ores at Anaconda since that time, that has in any way been or tended toward a disadvantage to the Parrot Company.

The main groups or claims of the Parrot Company in 1898 or 1899, were the Parrot group proper, the Little Minah group, lying a short distance to the north, and the Champion group, lying north of Burlington, about three miles northwest of Butte, the Oro Butte group, which lies to the west of Montana Street, over the top of the hill, and two locations known as the Last Hope group, about two miles to the east of the Parrot smelter, across Silver Bow flat; there has been no substantial change in the mining properties of the Parrot Company from 1898 until 1910, that is, by acquisition of any new claims or properties or any disposition of the old. The Last Hope and Copper Reef claims are not known to have any particular value; they were really acquired for a small amount of water which originated on one of them, and have not produced anything; they are not within one or two miles of any producing mine or property. The Oro Butte group that I spoke of, is situated on North Montana Street, northerly from the city of Butte about half a mile, and northwest of the main Parrot shaft, about three-quarters of a mile. This group was not producing at the time of the acquisition of the interest in the Parrot by the Amalgamated; since then there has been work done by the company, even up to the present time; we are under that ground with a deep working, and not a pound of ore has ever been taken out of those mines that was good enough to save. The Champion group is about three miles westerly from Butte in the silver producing section of the district. There has been no considerable work in that district since the severe drop in the price of silver in 1893; since that time no one has been able to make any profit with the mines or the ores in that locality. Since that time no work would have been justified by the Parrot Company upon that group. The Little Minah group is situated northerly from the main Parrot group, a matter of six to eight hundred feet. At the time of the Amalgamated acquisition in the Parrot stock this group was not a producer, only perhaps in a very small way; since then extensive development work was carried on in the Little Minah during the period after the Amalgamated interests were acquired in the Parrot Company and prior to the time of the sale of the Parrot Company to the Anaconda Company, in 1910, and a comparatively small amount of ore to the developments made, was recovered or was discovered. No more development work would have been justified upon the Little Minah group.

The principal assets in the way of mining property of the Parrot Company during all the time has been this Parrot group. When

the Amalgamated interest secured the Parrot in 1899, the shaft was at the 1,000 foot level. The mine had been pretty well worked out to that depth, although there were some considerable ores remaining, but the richest part of the mine had already been worked. The only real good ore remaining was a shaft pillar in the vicinity of the 500, and upon which the old Parrot company was working at the time it was taken over by the Amalgamated; this, of course, had to be stopped or the shaft would be ruined if continued, and the shaft, the main shaft and air shaft have been continued and sunk, with continuous workings, until it has reached a depth of about 2,100 feet. The fact that the Parrot Company was taking out this shaft pillar ore indicated that they were very badly off for high grade ore for some very urgent reason or they wouldn't have taken the ore from the shaft until the mine was ready to be abandoned. It is always necessary to leave solid ground in the vicinity of the shaft, and no matter what the character of the ore, it is always left, a shaft pillar, to sustain the shaft, until the mine is finally abandoned or the shaft is finally abandoned, and then these ores can be extracted; but the mining that they were doing at that time, in 1898, around the shaft and in the shaft pillar, has caused trouble to the Parrot shaft ever since it was taken over by the Amalgamated Company. The result of the development under the new Parrot management since 1899 has been down to the 2,100 foot levels, with stations and levels cut and run practically every hundred feet; as to the result of ore development and production, down say to the 1,500 we found a fair grade of ore, but they kept getting leaner and leaner, the vein getting smaller and the shoot of ore very much shorter in length; in fact on the 1,200 it reached but a few hundred feet west of the main crosscut, and the ores got poorer until we reached a point, in the last one or two years of operation, or perhaps more, that it was impossible to make the ores pay. At the time, or about the time, of the purchase of the Parrot property by the Anaconda Company in 1910, say through 1908 and '9, there was not a good showing of commercial ore; with the prices prevailing in 1908 and 1909, and the early part of 1910, the Parrot ores could not have been profitably worked. The reason for the ore bodies shortening in length in the lower levels in the manner that I have referred to and described, is that there is a fault vein passing through, known as the Blue Vein, which intersects the Parrot shaft below the 1,200, and it keeps cutting that off successively as you go down; the veins kept getting shorter as we got down; west of this fault plane we found what we thought was the Parrot vein, but it was hardly large enough to identify it as being so; there were thousands of feet of drifts and crosscuts run for the purpose of exploring on these levels; the Parrot property was thoroughly and properly developed; you could do more work, but it would not be considered good mining; everything was done that could be done, and in every direction that would suggest itself, as to the probability of finding ore.

The plan maps of the Parrot workings introduced in evidence plainly show this story of the development of the Parrot mine as

I have given it here, to a certain extent, as the workings actually progressed in the mine for years, in connection with the operations, getting leaner and poorer in depth. The only known ore bodies left in the Parrot, commercial ore bodies left in that mine, is the shaft pillar, and these should not be extracted until the mine is abandoned.

I am familiar all through its course, with the controversy that existed between the Parrot Company and the Original Mining Company, as to the ownership of certain ore bodies to the west of the Parrot shaft. Briefly the history of that controversy, as I know it, is as follows:

The Parrot workings from its shaft, in its lower levels, had, as already testified to, been extended westerly along what is supposed to be the Parrot vein at different places, but showed very poor. The Original workings from the Stewart and Original claims, of the Original Mining Company, were extending in depth west to bring their workings down underneath the Parrot ground
257 and underneath the Washoe ground, in the vicinity of this

Parrot mine. And we started to investigate and made connections from the Parrot mine with some of these workings; also had access, through permission of the management of the Original Company,—made surveys and examinations of their workings. And our claim was that the Parrot vein, in its descent into the earth from the surface, had united at some point with a vein that we believed the Original Company was working, and dipping from the north, and they connected, and below some certain point they belonged to the Parrot Company. That point had not been definitely and clearly ascertained, although we thought we knew it at some points. The Parrot's claim to these ores would depend, if there was any such actual joining or union, on the seniority of location of the surface claims in which the vein apexed, and whether there were extra-lateral rights upon those surface claims. The ore bodies of commercial value in this controversy under this claim of the Parrot Company had been actually developed in the operation of the mines of the Original Consolidated Mining Company, in their ordinary working operation; these ore bodies during that time were in their possession. This claim of the Parrot Company, or its assertion of possible or probable ownership of these ore bodies, was very seriously controverted by the Original Company; in fact to such an extent that they rather considered our claim was very ill-founded, and that there was nothing to it, so much so that we had free access to all of their workings; they believed that we could not substantiate any of the claims that we were making. That controversy never reached the form of a lawsuit. In the prosecution of its claim to ownership of these ores, the Parrot Company would have had
258 entailed upon it the making of development to the surface, to prove the rights of the Parrot claim, and also determine the point of junction. There was a point of junction somewhere, because there are veins all right. The Original Company has undisputed right to a considerable depth without any question. Now, the point of junction would have to be determined for the whole

extent. Our vein might not have continued to a point of junction, or it might have been cut off, but it was necessary to establish our right to prove a junction if such there was, and also prove our apex then to the surface. This development work would have been very expensive, and the prosecution of a lawsuit such as that was, outside of the development work required would have been very expensive and protracted; the expense would have been several hundred thousand dollars. It is pretty plain from the development in the ground that the vein in which these ore bodies lay, and which had been developed by the Original Company, apexed in the Original ground, and it would have been necessary for the Parrot Company to establish its claim, to show a connection of the Parrot vein in depth with this Original vein or Stewart vein, and a priority of the Parrot location. The rights of other companies were also involved in this controversy, inasmuch as these workings beneath the surface of the Washoe Company ground, some portions of them, if there were no extralateral rights to this vein, that ore would have belonged to the Washoe Company, and they would have had to look after their interests, or if there had been a possible union of these ore bodies in depth with the Washoe vein, or a cutting off of the Stewart vein, so that there would have been a sub-fault or underground apex in the Washoe Company's ground; these were all contingencies that might have arisen. A large part of the 259 ore bodies in controversy were actually under patented surface owned by the Washoe Company.

I have already stated that I knew the Gaylord plant, or the partially constructed plant of the Parrot Company at Gaylord. That is not a good site considered with regard to treating the production of the Parrot or other Butte mines. The principal reason is the difficulty of transporting the ores to that plant, across the main range of the Rocky mountains. And then at the time the Gaylord plant,—or in any later years,—at the time the Gaylord plant was located there, that country was a very productive farming region,—with the great agitation of smoke troubles in this country, which is a very serious one in the location of a smelter site, and it was practically suicidal for a small concern, or a reasonably small concern, to locate at such a point, outside of any other conditions, of transportation of ores or water facilities or power facilities, or any other condition. Another disadvantage of the location of the Gaylord plant was its only being served by one railroad; they were bound to transport their material in and out by one concern; the water conditions over there were not good, even after a great deal of money had been expended upon the Parrot ditch; it was a continual source of trouble and expense to keep it from injuring—the ditch breaking out and injuring those ranchers over there, after we took it over. The condition of this big ditch as to its bed and water-carrying capacity was very poor; it ran through such soil and rocky conditions over there that it was almost impossible to keep it up or make it hold water. From my knowledge of the conditions I would say that the Parrot Company would not have been justified in expending \$600,000.00 or \$650,-

000.00 in completing that plant, with an idea of operating
260 it in connection with its mines. The only thing to do with
it was to dispose of the material and property to the best
advantage. After the acquisition of the Amalgamated interest in
the Parrot Company efforts were made to dispose of the Gaylord
plant to a smelter company, to Senator Clark and to the Pittsburg
& Montana Company, but both offers were turned down after their
examination. Part of the material and machinery was sold to the
Anaconda Company and part to a power company at Livingston,
and then brick and other like material, corroded iron, was sold
in the vicinity over there. The real property was afterwards sold
in one lump to a Mr. Kroyer for the Madison River Power Com-
pany. There is no connection between that company and the Par-
rot Company or any of the Amalgamated Companies, and is not
at the present time so far as I know. We tried to dispose of this
property to two or three individuals as an electric power proposi-
tion; Governor White, of Dillon, and his associates were one party,
the Conrey Placer Mining Company of Virginia City, they in-
vestigated it very thoroughly with a view of taking power to their
dredges, and those were all turned down, and they refused to buy.
There were also negotiations for the sale of the strictly agricultural
portion of the land and water rights, but the Parrot Company was
never able to obtain an offer which in any way approached in
amount the amount for which it was sold to Mr. Kroyer, \$100,-
000.00. We had the land appraised by people we considered com-
petent to say, and the land value they returned was worth in the
neighborhood of thirty to thirty-two or thirty three thousand dol-
lars. The sale to Mr. Kroyer was for the best price we could obtain
and an advantageous sale for the Parrot Company; if we
261 had been able to make this arrangement for its sale some
years before, we would have saved considerable money. It
had no particular value as an independent power plant; we had
that looked into with a view of bringing the power into Butte;
after engineers examined it and said that while it was possibly
feasible to bring the power into Butte, the amount that could be
delivered here was so small that the charges against it would more
than offset any price we could secure for the power. It would have
required a large investment to utilize that as a power proposition,
either at Gaylord or for transmitting power elsewhere. During
the years that the Amalgamated Company was interested in the
Parrot Company, and prior to its sale to the Anaconda Company
in 1910, there was but one mining operation carried on on the
Parrot ores through workings of any other company; that was on
the Bellona vein and mined through the Moonlight shaft. The
Bellona lies south of the Parrot claim. This mining was done in
this way for the reason that it could be done very much more
economically and advantageously. The ore was extracted by the
Washoe Company at cost, kept separate and distinct from the ores
of the Washoe Company, checked and sampled by the Parrot Com-
pany, and the operation was a considerable advantage to the Parrot
Company; to have mined this ore itself the Parrot Company would

not only have had to construct new workings, but also a surface plant. During all these years, with the exception of the mining of this Bellona ore, none of the Parrot ores were mined through the workings of the Anaconda Company or any other company. Since the acquisition of these properties by the Amalgamated Company in 1910, there has been no mining done by the Anaconda

Company upon the Parrot properties, with the exception of
262 a small amount of ore that was taken or mined through the Stewart from the Little Minah vein. The old workings of the Parrot have never been entered yet.

I am familiar with the matter of the conveyance by the Parrot Company to the owners of the Nipper and the Anaconda Company of certain rights upon a vein known as the Blue vein, in 1906, in exchange for a conveyance by those owners in the Anaconda Company of certain rights in the said vein and ore bodies to the Parrot Company; this arrangement was to settle extralateral rights in dispute, and was an advantageous one to the Parrot Company.

I am familiar with the claims owned or claimed by the Parrot Company, since 1898 or 1899; since that time the Parrot Company has never owned or asserted ownership in any of the following lode claims: the Kentucky Lode, Lot 156, the Hall, Millsite Lode claim, Great Western Lode Claim, or Narrow Gauge Lode Claim.

I am familiar with the different properties that were acquired by the Anaconda Company under the sales and transfers in 1910, in the Butte District. There were two main reasons for that purchase and consolidation; one is the more economical and advantageous method of working through one ownership; that is, to explain, if you have a shaft situated on one property, with your operations going up to another, when it is on ground owned by another party you have to stop, when operations might be carried on without interruption to great advantage. The other was the question of being unable to determine, without very great expense, and in some cases doubt, even after a great expense, a division of the rights to these ores. Now these are determined and are decided by conducting the

workings of the property under one ownership, so that they
263 don't have to be considered; that is, you don't, if you run out and encounter a vein, you don't have to go to work and determine where the apex of the vein is before you can mine it, if you own all of the ground. It was no advantage in the way of controlling the copper output of these Amalgamated Companies, whether they were owned or controlled in the manner they were before the sale to the Anaconda Company, or the way it stood after it. The Parrot properties, taking them as they stood at the time of the transfer to the Anaconda Company, were of considerable additional value to the owners of adjoining properties than to an independent company operating the Parrot property alone, for the reasons that I have given.

I was familiar enough with the value of the Parrot properties and all of its assets of every kind at the time of this transfer to the Anaconda Company, so that I could give an opinion as to the reasonable value of the property at that time, or any time within a few months prior or subsequent to that. The amount of Anaconda stock

transferred as a consideration for the Parrot property was 90,000 shares. Taking the price of Anaconda stock, running from, say, the first of February, until the last of April, 1910, ranging from the maximum of 52 down to a minimum of 40¼ dollars per share on the market, taking even the minimum, it was certainly a fair and reasonable price for the properties, and at least equal to any value it had. The Parrot properties, as an independent property, owned by an independent company, would not have been worth any such figure as an independent separate proposition. As a purely independent mining proposition I don't think you would ever recover that amount of money out of the Parrot ground properties, and its

showing was not such as would have justified any purchaser
 264 of it as an independent proposition, in paying any such price. The Parrot offices in Butte were at all times kept open in Butte, and there were maintained at all times, mine maps and records showing the condition of the Parrot properties as to the ore development and everything that pertains to the value of a mining property, and books of account and everything that shows the condition of the corporation, at the Butte office, and at the New York office they had complete books of account of everything; I know at this end they were open at all times to stockholders and people who had a right to have access to them.

I was familiar with all of the other Amalgamated companies surrounding or adjacent to or which would have any bearing upon the condition of the Parrot property, or the evidence of value of the Parrot properties during all of these years; there was no information which could have been obtained through access to these other workings,—the workings of other companies or properties than the Parrot Company, which would give at the time, through these years, or at the time of the sale to the Anaconda Company,—which would have given the possessor of such information any advantage over one who had access to the Parrot records and books and property. There was nothing revealed in any of these other properties or in their operations anywhere, which would tend to give the representatives of the Anaconda Company or any other corporation, any advantage over a Parrot stockholder, in knowing and determining the value of the Parrot property. There has not been, so far as I know, through the operations here, any discrimination in the operation of the Parrot property, since the acquisition of the

Parrot by the Amalgamated, against the Parrot Company's
 265 interests; the reverse is true; there have been many pieces of development work and protective litigation in which the Parrot Company has never shared its proper proportion. I refer to the extensive litigation on the Nipper; also the crosscuts run from the other properties which developed their claims and which they paid no portion of the expense. The reason this was done was that the Anaconda Company had to protect its interest in the Nipper; it was supposed to do that for one thing; also it had to run these crosscuts I mentioned before, through the Little Minah, to get to its Clear Grit; and it could have rightly made a charge to the Parrot Company, but these things were never done; there was no charge ever made; the Parrot Company was looked upon as a kind of a lame

duck anyhow. At the time of the purchase of the Parrot properties by the Anaconda, I know the properties of the other companies whose property was purchased by the Anaconda at practically the same time, and I know the consideration paid to each of these companies by the Anaconda Company. The value of the consideration paid the Parrot Company, or any other company would depend somewhat upon the value of the other properties taken in, and the amount of stock issued for it. Considering the properties and assets of these other companies that were taken over at the same time the Parrot properties were, and the amount of stock issued to them, the payment of 90,000 shares of Anaconda stock for the Parrot properties was altogether in favor of the Parrot in going in with at least two concerns, or being a partner with two concerns, the Anaconda and Boston & Montana, which were taken in; just those two along would have given it more value than it could ever have had standing on its own footing, and proportionately to the amount of

266 stock given to each of the other companies for their property, the consideration to the Parrot Company was fair."

47. Add to the appellants' said statement of portions of the record to be included in the record on appeal, the following portions of the deposition of C. F. Kelley, a witness called by defendants.

"Deposition of C. F. Kelley, a Witness for the Defendants.

I have resided in Butte nearly thirty years; I am a lawyer by profession; I have been attorney for the Amalgamated Companies since about the first of 1901, and am now a director and Vice President of the Anaconda Copper Mining Company; prior to becoming attorney for the companies I had had experience in connection with the mining properties now operated by the Anaconda Company, as an engineer and assistant engineer; I had a general knowledge of the properties, and am familiar with the underground conditions in some of them. Since then I have acquired a general knowledge of the underground conditions in the properties of these companies, and particularly those that were involved in litigation from time to time with other companies. I am familiar with the settlement between the Parrot Company and the owners of the Nipper, upon what is known as the Blue Vein ore bodies, and am familiar with the facts concerning them. The arrangement was advantageous and fair to all of the parties involved as any settlement that could have been arrived at, and was decidedly advantageous to the Parrot Company.

I was familiar with the controversy that arose between the Parrot Company and the Washoe Company and the Clark interests,—the Original Consolidated Mining Company, belonging to Senator

267 ator W. A. Clark, regarding the ore bodies west of the Parrot shaft and referred to as being ore bodies in the Stewart fault vein. I was also familiar with underground conditions there. I participated personally in the matter; that is, the parties on each side had conferences and I had conferences with Senator Clark him-

self, also with Mr. Wethey, Mr. Pyle and Mr. Weed, representing him. The controversy and the positions taken by the respective parties might be briefly described as follows:

In the first place, the Parrot vein was one of the old east and west veins; its strike was and is almost due east and west, I think. In the upper levels of the Parrot line the vein had been worked westerly from the Parrot shaft to a connection with the mine workings that had been extended upon the same vein easterly from the Original shaft. So that above the ten hundred foot level there could be practically no question but that the vein upon which the Original Mining Company conducted its development east of its shaft,—the Original Company being Senator Clark's corporation,—and the vein upon which the Parrot Company conducted its operations west of the shaft, was the same identical vein, and no controversy arose between the companies as long as that condition maintained. Below the ten hundred foot level the Parrot vein became very much smaller and very much more impoverished, so that in going westerly from the main crosscuts of the Parrot mine on the lower levels the workable ore entirely disappeared, and on some of the levels it was a matter of extreme difficulty to follow the vein; it was subdivided into a number of small fissures, and the rock in these fissures could

268 hardly be distinguished from the country rock. For that reason, after exploratory work had been done in the hope of finding ore, the lower levels of the Parrot had not been continued westerly as the upper levels had been. Entirely distinct from the Parrot vein that I have described, and pursuing a northeasterly and southwesterly course through claims that lay north of the Original and Parrot group of claims, was a vein which subsequently became known as the Steward fault vein. This vein, which had been mined in the East Steward shaft down to a considerable depth, and which subsequently had been mined from the West Steward shaft in its lower levels, pursued such a strike that southwesterly it encountered, as we believed, the fissure of the original Parrot vein, and either united with the Parrot vein or occupied for some distance the same fissure as the Parrot vein. Upon the theory that if we possessed the older locations and could trace our vein so as to establish its identity and continuity down to those levels, where the Steward fault vein had united with it; and if we could establish such a union, we could, if we established the further fact of extra-lateral rights as incidental to the Parrot claim through which the apex of the Parrot vein passed, establish our ownership to the entire ore body, we asserted our claim. That was the basis of the claim. To have established the claim would involve the three propositions that I have stated: an identity and continuity of the Parrot vein, union with the Steward vein, and extra-lateral rights on the part of the surface claims containing the apex of the Parrot vein. For the reasons that I have given there were no extensive workings to the west in the lower levels, where the large ore bodies of the Steward fault vein were found; and in order to assert its claim the Parrot

269 Company would have had to drive westerly on the Parrot vein on a number of levels, to a point in the vicinity of these large ore bodies on the Steward Fault vein, and then by a

series of raises have connected them up so as to establish the identity of the vein disclosed on the different levels. The Parrot Company started to do that development work, and the Parrot vein, while we did not assert this during the controversy, as a matter of fact on some of the levels that we were extending westerly, the Parrot vein faded away to where it became necessary to keep a geologist almost constantly in charge of the work of extending that drift westerly in order to keep within the fissure. Now, on the 1,200 level the miners on at least two occasions to my knowledge, got off of the fissure. We also believed that as we went west the fissure would open up so that it could be more readily and clearly established. In addition to some geological difficulties that were encountered, the Parrot mine had become completely closed in its upper levels. It was closed from the crosscuts, the main crosscuts clear out through the working. The old stopes had caved and crushed, and to have gone in and opened up those old workings for a good many hundred of feet, as it would have been necessary to do, both laterally and perpendicularly, would have involved a very large expenditure of money and would have been accompanied by very great difficulties. For these reasons, while we asserted the claim and believed we were justified in doing it, and had no other solution been offered, would have ultimately worked it out to the point where we could have satisfied ourselves that there was sufficient ground for litigation or not, as the case might be, and as the facts might show, it was very much to the interest of everybody not to precipitate this litigation, 270 which we all realized would be very extensive and very expensive. For that reason, at an early stage in the negotiations the matter of waiver of the statute of limitations was taken up, and so anxious were both of the parties to avoid litigation, that an agreement was made waiving the statute of limitations to give both parties ample time for development work.

Now, I may say further, that in conversation with Senator Clark over this matter, he at all times maintained in the strongest and most emphatic manner his absolute belief in his right of ownership to all of these ore bodies, and that he never at any time conceded that the Parrot Company had any right, and it was with some difficulty, I think, that we persuaded Senator Clark that we were honest and fairminded in our assertion of title; that we really believed that we had a right there that in the interests of our stockholders we should protect. Moreover, in discussing this matter with Mr. Pyle, I know that he at all times felt that the claim was a very shadowy one, and he at all times professed the greatest confidence in the ability of the Steward Company to maintain its ownership. I think that Mr. Weed's position was somewhat different from Mr. Pyle's, and more in line with what he testified to, and I think that while he really believed that it could be shown that there was more or less of proximity between the Parrot vein and the Steward vein in depth, that he believed that the Steward vein was a very much later geological occurrence than the Parrot vein, and that he felt that while the Steward vein might occupy the same fissure as the Parrot vein for indeterminate length, making his composite vein, as he

called it, that he could show a clear line of demarcation physically and mineralogically and geologically between the two that would establish their separate identities.

271 The rights of the Washoe Copper Company were very seriously involved in this controversy, in two ways. In the first place, the workings on the Steward fault vein had pursued the dip of the vein to the south to such an extent that the then valuable part of the veins, or a large part, I will put it, of the valuable part of the veins, was entirely underlying Washoe surface, the Washoe Copper Company being the owner of the Washoe claim and of the Limitation claim. Now, the Parrot vein, the apex of the Parrot vein, had not been, and it would have been a matter of some extreme difficulty to have clearly developed it west of North Arizona street, for the reason that the surface is practically completely covered by buildings, and the original natural surface has been changed by building and other operations that have been conducted upon it, only small exposures of limited spaces are open to inspection. A glance at the map will show that the claims comprising the Parrot group are all comparatively small claims, some of them were located prior to 1866, before we had any Mining Act at all, when they were located in accordance with the customs of the Summit Valley Mining District; the rules that had been established. Others located under the Act of 1866, and then still later located under the Act of 1873. So that we had all sorts of locations involved in there. These location lines, the surface lines, intersect each other, or one another, at varying angles, and we always had some doubt as to whether when we traced for the Parrot Company the apex of this vein along the surface, we could establish for the individual claims comprising the Parrot group, extra-lateral rights that would entitle it to maintain its ownership under the Washoe surface. And, of course, the Washoe Company was in a position where, unless this could be clearly established, it would have asserted, by virtue of its surface ownership, these rights. That applied to the Parrot vein. It likewise would have applied to the Steward vein, which pursues a northeasterly course through the Dives, into the Steward claim. And it was a matter not at all clear, up to the time of the settlement of these controversies, whether that vein of itself possessed extra-lateral rights as against either the Parrot or the Washoe.

272 Then this situation was further complicated by the one that was involved in an agreement and in a deed between the original owners of the Steward and the owners of the Clear Grit claim. The Washoe was the owner of the Clear Grit. The northeasterly portion of the Clear Grit claim was in conflict with the Steward claim, and the lines so lay that the place of the east end line of the Steward, and a plane—the plane of the east end line of the Clear Grit or the southeast end line, and the plane of the end lines of the Steward claim, drawn from a common point of intersection within the Steward, would make a rapidly diverging angle. There was an agreement at the time of the settlement of the surface con-

flict between the Clear Grit and the Steward, by which the Steward released to the Clear Grit the original vein,—the original discovery vein of the Steward,—No, all veins except the original discovery vein of the Steward within the area of this conflict. Now, this was a controversy that I don't think had been called to the attention of the Clarks—they at no time contended that this Steward fault vein was the discovery vein of the Steward; it was a secondary vein, and according to the manner in which they platted the apex of it, it would have passed through this triangle, and if it did, the Clear Grit would have been entitled to maintain extra-lateral rights as
273 against the Steward, through, this diverging angle between the planes I have described; that would have embraced a very large portion of these ore bodies. That controversy never reached the lawsuit stage. If this controversy had been carried to a final completion through litigation, the expense would have been enormous.

I participated in and was familiar with the proceedings which led up to the purchase of the properties of the companies here, including the Parrot Silver & Copper Company, by the Anaconda Copper Mining Company, in 1910. I know the advantages of the purchase of the ground that was involved in that purchase, and the purposes for which the proposition of the Anaconda Copper Mining Company to purchase these various holdings was instituted and carried out.

The reasons for consolidating the properties of these different companies were apparent, and may be stated as being in chief, two. The first one had to do with the actual operations of the properties. From the time the Amalgamated Company became interested in these different corporations until this consolidation took place, in 1910, while to some extent the general operations of the company had been concentrated under general supervision, at the same time each of the different companies maintained its own separate, independent operating organizations, together with a full complement of general superintendence, and a full equipment, so far as surface plants, shops of different kinds, shafts, and so forth, were concerned. It was desired to eliminate the unnecessary expense of all of the general superintendence of the individual companies; to accomplish the economies of abolishing the separate surface plants and equipments, and underground of establishing, maintaining main shafts
274 which would be in a position to develop the ore bodies of the different companies conveniently and economically; to provide a complete and systematic system of drainage and ventilation, which could not be done as long as the companies were operating separately.

The second purpose, and perhaps the most important, had to do with the settlement of these controversies that were constantly arising between the companies involving the ownership of the underground ore bodies. Experience had shown that lines which might be established with the utmost fairness, so far as they would govern the ownership of one ore body, would not be at all satisfactory to the companies when a new ore body was discovered that came

within the planes fixed, as I have said. And in addition to this: there were new developments that were constantly being made on the same and on different ore bodies; many of these developments were made at considerable depth underground, where there had been no surface work and there were no workings that approached the surface. In order to have demonstrated with accuracy the ownership of these ore bodies, it would have been necessary to have raised on them continuously to a point as high as the surface, or near the surface, in order to determine the apex, and then drift upon what for the most part would have been entirely barren material, along the fissure lines to establish their relation to the surface lines of the different claims, a proposition that would have been so extravagant and wasteful from an economic standpoint that it could not possibly be justified.

As a result of these conditions it was deemed wise and expedient to consolidate the properties, and those were the purposes, and the only purposes, that were to be subserved by so doing.

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I know the plaintiff in this action, Mr. Wall. Before the institution of this suit I had more than one conversation with Mr. Wall touching the claims of Mr. Wall, and particularly regarding an examination of the company's records, and particularly possible litigation. When Mr. Wall originally presented his request for an examination of the books of the Parrot Company, he did it to the eastern officials of the company; I was not present, but I was advised of his request and advised them to permit the inspection. Later I saw Mr. Wall and Mr. Dunham in New York, and at that time it was my purpose to take the matter up with Mr. Wall in a reasonable way, and I told him whatever inspection he desired to make of the books, of course he was at liberty to do so. Moreover, that whatever examination he desired to make of the property, by himself or by any engineers whom he might desire to employ, would be entirely agreeable to the management, and that not only would we interpose no objection, but that all maps, underground workings, and whatever else was in possession of the company which could possibly give him any information as to its operation or the value of the property, we would be very glad to assist him in obtaining such information. In making those representations I was acting for the Parrot Company and for the Anaconda Company as well.

I wish to make this statement about the report of Professor Kemp, referred to in his testimony. When Mr. Clinton, counsel for complainants, made the request or when Mr. French made the request for the original report, my recollection of the matter was somewhat at fault. I remembered that Professor Kemp had written what I thought was a letter, addressed to either Mr. Thayer or myself, regarding this matter, and which I knew was of a preliminary nature,

276 because I knew that Professor Kemp had never come to the position where he would express any unqualified opinion concerning this controversy until additional development work

had been done. I looked here for the report and could not find it, and I either wired or wrote to Mr. Thayer, the President of the Anaconda Company, in New York, for it, at that time my purpose being

to get it out here as this litigation was pending here in Montana. I received from Mr. Thayer a letter, in which he said that he had not been able to locate the report. I called your attention to that letter, I think.

Mr. Clinton: I think it was read into the record.

The Witness: Yes. Now, just what date the Kemp report arrived here, I don't know, for this reason: I frequently receive publications, printed publications, from Professor Kemp, as I do from a great many sources, containing addresses of Professor Kemp that are of more or less general nature, papers that he writes upon different geological subjects and matters of this kind. These in the press of business—and it was rather pressing at that time—communications that come in the shape of circulars or envelopes of that kind, are piled up on my desk, and I go through the personal mail, the letter mail only. Now, among the accumulation of these envelopes, catalogues, and things of that kind, I found this yellow envelope containing these reports. There was no letter of enclosure, and there was no separate letter; I had not written Professor Kemp; I did not expect to receive any report in this connection from him; I did not know that he had sent these reports to me at all, and as soon as I found the reports I endeavored to get into communication with you,

Mr. Clinton, regarding the matter.

277 This was the latter part of October or the early part of November. Well, when was election?

Mr. Clinton: Well, I was absent about the last week in October and the forepart of the week in November.

Mr. Kelley: When did your case close?

Mr. Clinton: Oh, we closed sometime early in October.

The Witness: I did not know I had the report at that time; I never have seen the original report that you demanded, from that day to this, and I don't know where it is.

Mr. Evans: Well, that was long before it came, when that request was made.

Mr. Kelley: Oh, yes.

Mr. Clinton: I will make this statement for the record: About the first part of November I was called by Mr. L. O. Evans, stating that some report had been received from Mr. Kemp, and that if we desired it could be offered in evidence, notwithstanding that our time had expired to offer it.

Mr. Kelley: Well, prior to that time I had spoken to you about it.

Mr. Clinton: And prior to that time Mr. Kelley referred me to Mr. Evans as having—

Mr. Kelley: Yes, I being about to leave for New York.

Mr. Clinton: Stating he was about to leave for New York."

48. Add to the appellants' statement of portions of the record to be included in the record on appeal, the following portions of the deposition of Harry B. Byrne, a witness called by defendants.

"Deposition of Harry B. Byrne, a Witness for the Defendants.

278 I have lived in Butte about eight years; I am a stock broker, manager of the firm of Paine-Webber & Company, which firm is engaged in buying and selling stocks, principally on the New York and Boston stock exchanges. The capital stock of the Anaconda Copper Mining Company was dealt in on the eastern exchanges in the year 1910, throughout the entire year; our firm received daily quotations of the prices at which that stock was sold during that period. The quotations received represented actual sales. I have a publication which preserves the prices of the stocks as they have been traded in upon the Boston and New York Exchanges, which publication is taken as authority in the regular course of business. It is entitled "Statistical Information Relating to Stocks, Cotton, Grain, Provisions, etc.," and shows the prices, the high and the low for each month. I have here the high and low prices of the Anaconda Copper Mining Company's stock per share, for each month, during the month of February to April, inclusive, 1910, and for the entire year. These prices were taken from the records of sales on the New York Stock Exchange. The New York Stock Exchange reports and shows the actual prices for which the stock was sold. The high price of Anaconda stock in February, 1910, was \$51.25 a share and the low \$45.00; in the month of March, the high was \$52.00 and the low \$45- $\frac{1}{8}$; in the month of April, 1910, \$47- $\frac{5}{8}$ was the high price per share, and \$40- $\frac{1}{4}$ the low price."

49. Add to the appellants' statement of portions of the record to be included in the record on appeal, the following portions of the deposition of Walter T. Bleick, taken on behalf of the defendants.

"Deposition of Walter T. Bleick, Taken on Behalf of the Defendants.

279 I am a shorthand reporter, employed in the Legal Department of the Anaconda Copper Mining Company and the Parrot Silver & Copper Company. In connection with my employment I have the original minute books of the Parrot Silver & Copper Company, showing the proceedings of the meetings of the Board of Directors, Special Meeting, held on Monday, the 14th day of February, 1910, and also the original minutes of the said Parrot Silver & Copper Company showing the proceedings had at the Special Meeting of Stockholders at Butte, on the 30th day of April, 1910, at which meeting the transfer of all of the property of the — to the Anaconda Company was authorized."

The minutes of these meetings were offered and introduced in evidence over the objection of complainants that they were incompetent, irrelevant and immaterial. The minutes so offered and introduced in evidence, are hereto attached and made a part hereof.

"I have also the original affidavits of O. L. Dillenbeck and B. V. Alley that were presented at these meetings, and referred to in the minutes."

Copies of these affidavits were offered in evidence, subject to the same objection, and also hereto attached.

280 *Minutes of a Special Meeting of the Board of Directors of the Parrot Silver and Copper Company, Held at the Office of the Company, No. 42 Broadway, New York City, on Monday, the 14th Day of February, 1910, at 11 o'clock a. m.*

Present: John D. Ryan, F. P. Addicks, B. B. Thayer, A. H. Melin, A. B. Grafius.

Absent: Sidney Chase, H. A. Gallwey.

The following waiver of notice and consent to the holding of the meeting was signed by each of the Directors:

"We, the undersigned, Directors of the Parrot Silver and Copper Company, do severally waive notice of a Special Meeting of the Directors of said Company, and do hereby consent to the holding of such meeting on Monday the 14th day of February, A. D. 1910, at the hour of 11 o'clock a. m., and to the transaction thereof of any and all business which may properly come before said meeting, with the same effect as if the same had been regularly called and due notice thereof given to all concerned.

(Signed)

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F. P. ADDICKS.

JOHN D. RYAN.

B. B. THAYER.

A. B. GRAFIUS.

A. H. MELIN.

281 In addition to the foregoing waiver, the written waivers of notice and consents to the holding of a meeting, signed by Mr. Chase and Mr. Gallwey, were filed by the Secretary.

The meeting was organized, Mr. F. P. Addicks, President of the Company, acting as chairman, and Mr. A. H. Melin, Secretary.

The Secretary read the minutes of the Special Meeting of the Board of Directors held on the 9th day of February, 1910, which, on motion duly made and seconded, were approved.

The following resolution was introduced by Mr. Grafius:

"Whereas, it appears that the Anaconda Copper Mining Company will not be in a position to submit to this Company a definite proposition stating upon what terms and conditions said Anaconda Copper Mining Company will purchase all of the property and assets of this Company at a sufficiently early date to permit such proposition being submitted to the stockholders of this Company for their consideration at the Special Meeting of stockholders heretofore called by resolution of this Board to meet on the 28th day of March, A. D. 1910, be it

Resolved, that the said Special Meeting of stockholders be and the same is hereby postponed until the 30th day of April, 1910; and be it further

Resolved, that a Special Meeting of the Stockholders of this Company be and the same is hereby called to meet on the 30th day of April, 1910, at the principal office of this Company in the Hennessy Building, Butte, Montana, at 11 o'clock a. m. for the purpose of considering a proposition to sell, transfer and exchange all of the

property and assets owned or possessed by this Company, of every kind or character, real, personal or mixed, corporeal and incorporeal, in law and in equity, to the Anaconda Copper Mining Company, for a portion of the capital stock of the latter Company; and for the transaction of any other or further business which may be lawfully transacted at such meeting; and be it further

Resolved, that for the purpose of said meeting, the transfer books of this Company close at the hour of 3 o'clock P. M., on the 30th day of March, A. D. 1910, and reopen on the 2nd day of May, A. D. 1910, at the hour of 10 o'clock A. M.; and be it further

Resolved, that the action of the Board of Directors in ordering the transfer books closed for the special meeting which was to have been held on the 28th day of March, as aforesaid, be and the same hereby is revoked, and the Secretary of the Company be and he is hereby authorized and instructed to notify the New York and Boston Stock Exchanges of such revocation.

There being no further business presented to the meeting, the meeting thereupon adjourned.

— — —, *Secretary.*

STATE OF NEW YORK,
County of New York, ss:

We, the undersigned, F. P. Addicks and A. H. Melin, respectively President and Secretary of the Parrot Silver and Copper Company, a Montana corporation, do hereby certify, under the seal of said corporation, that the above and foregoing is a full and complete copy or duplicate of all proceedings had at the Special Meeting of the Board of Directors of said Parrot Silver and Copper Company, held at the office of the Company, No. 42 Broadway, New York City, New York, on Monday, February 14th, 1910, as entered in the minute books of said Company, and is a full, true and correct transcript and record of each and every act and thing done, proceeding had and resolutions and motions adopted thereat.

Witness our respective hands this 15th day of February, A. D. 1910.

F. P. ADDICKS, *President.*

A. H. MELIN, *Secretary.*"

Attest:

A. H. MELIN, *Secretary.*

284 *Minutes of a Special Meeting of the Stockholders of the Parrot Silver and Copper Company. Held at the Principal Office of said Company, in the Hennessy Building, in the City of Butte, Silver Bow County, State of Montana, on Saturday, the 30th Day of April, A. D. 1910, at 11 o'Clock a. m.*

The following named stockholders, owning or representing the number of shares of the capital stock of the company hereinafter set opposite their respective names, were present in person or by proxy, filed with the Secretary, to wit:

	Shares.
Addicks, Frederick P., by H. A. Gallwey, proxy.....	10
Alden, Charles B.	3
Aldrich, Helena C.	10
Alland, Morse J.	250
Alland, Samuel	275
Allis, D. Hurlbut	10
Andrews, Emily K. Mrs.	10
Anthony, David M.	300
Arnold, Julia Miss	5
Baker, Ellen Talbot, Mrs.	500
Baker, Emily F.	5
Baker, George H.	100
Barker, Alfred	10
Barry, Esther S., Miss	10
Bartlett, Bros. & Co.	70
Bartlett, Ella N.	2
Baxter, Pollie L., Miss	4
Beckman, F. H.	800
Beckman, Gabriel E.	100
Benjamin, Annie L., Mrs.	500
Bennett, Harriet S., Miss	20
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Berry, Clarence M., by H. A. Gallwey, proxy.....	15
Berry, Harry	50
Bevins, Leonard J.	16
Bird, William W.	10
Bond, Annie W.	2
Booth, Alfred	25
Borek, Paul	10
Bowen & Co., J. W.	2,390
Boynton, William F.	50
Boynton, W. Herbert	50
Bradford, George H.	16
Bradlee & Cutler	445
Bradway, Charles A.	10
Bradley, Jasper W., Jr.	20
Brown, Alice Tufts	3
Brown, Clarissa P., Mrs.	6
Brown, John M.	150
Burnham, Gertrude P., Miss	14
John A. Burnham, Wm. A.	
Burnham, Henry S. Burn-	
ham, Trustees for J. A.	
Burnham and Henry S.	
Burnham	75
Burns, James A.	5
Burt, Solon	100
Buttrick, Sarah J., Miss	2
Calgren, Antone J.	40

		Shares.
Campbell, Catherine C.	"	15
Capen, Samuel B.	"	100
Carleton, Frank H.	"	10
Carleton, Mary J.	"	10
Carter, Alice M., Miss	"	5
Carter, Herbert W.	"	25
Cass, Arthur T.	"	5

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Cassidy, Rose C., Mrs.	by H. A. Gallwey, proxy	10
Chadwick, George W.	"	160
Chadwick, Mary T., Mrs.	"	28
Chase, Charles A.	"	20
Chase, Charles H.	"	100
Chase, Frank T.	"	15
Chase, Sidney	"	50
Chase & Barstow	"	3,654
Chatfield, Henry H.	"	30
Church, Fred C.	"	50
Churchill, Frank N.	"	10
Clark, James D.	"	20
Clark, Samuel A.	"	2
Clay, E. C.	"	8
Cleland, Rebecca Helen, Miss	"	10
Clement, Parker & Co.	"	125
Cofran, George P.	"	20
Coit, Caroline E., Miss	"	2
Coit, Emily A.	"	10
Cooke, Edward C.	"	25
Coolidge, Nancy M.	"	5
Courtenay, Dennis	"	5
Coveney, James J.	"	5
Crafts, Henry W.	"	50
Crane, Levi L.	"	50
Crocker, Eliza A., Miss	"	2
Crosby, Abbie F., Miss	"	12
Crossman, Mary F.	"	20
Cummings, Leander W.	"	90
Curtis & Sanger	"	150
Cushman, Edward D.	"	50

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Dabney & Co., F. L.,	by H. A. Gallwey, proxy	100
Dadman, William E.	"	125
Danforth, Joseph W.	"	8
Danielson, Petra, Miss	"	10
Darr & Moore	"	465
Davis, Annie D.	"	16
Davis, Lucy B., Miss	"	3
Day & A. R. L.	"	52

	Shares.
Dearborn, Frank A.	54
Dearborn, George W.	50
Dinsmore, Mary E.	85
Diviney, James J.	1
Downer & Co.	535
Doyle, Thos. L.	120
Drumm, Thos. J., Trustee	
Est. John Hargate	10
Dubois, Ernest W.	98
Dudley, Wilbur, Sr.	10
Duncan, George H.	2
Durgin, Park & Co.	50
Edwards, Fannie C., Mrs.	20
Eisemann, Albert	200
Engelder, Conrad	10
English, Walter C.	20
Estabrook & Co.	150
Everett, Annah W.	25
Fabens, Frank P.	10
Fabyan, George	2
Fallon, Kate, Mrs.	25
Farrington, Laura J., Mrs.	5
Fay, George A.	30

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Fenno, Henry A.	by H. A. Gallwey, proxy	5
Field, Henry P.	"	35
Finely, Caroline B.	"	100
Fisher, Augustus M.	"	50
Fisk, Daniel	"	20
Fisk, Ella W.	"	10
Fletcher, George N.	"	250
Foley & Smith	"	50
Foster, Frederick A.	"	20
Fowler, S. Charles	"	50
French, George B.	"	50
French, Sarah B.	"	5
Friedstein, Hyman	"	30
Frisbie, Harriet M., Mrs.	"	10
Fuller, Mabel K., Mrs.	"	25
Gage, Carlos M.	"	40
Gallinger, Jacob H.	"	25
Gay & Sturgis	"	89
George, Charles P.	"	100
Gleason, Charles A.	"	30
Glynn, Christine	"	29
Glynn, Elizabeth	"	20
Goodrich, Gertrude H., Mrs.	"	10
Gordon, Silas D.	"	10
Gould, Charles E.	"	10

		Shares.
Gould, Emma D., Miss	"	5
Gove & Co., W. A.	"	60
Grafius, Andrew B.	"	10
Grant, Edwin E.	"	10
Grons, Herbert H.	"	25
Green, Fred C.	"	10
Greenleaf, Lyman B.	"	240

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Hale, Albert E.,	by H. A. Gallwey, proxy	30
Hale & Co.	"	55
Hall, Mollie W., Miss	"	17
Halle & Stieglitz	"	15
Hamlin, Joseph P.	"	200
Hamlin, Nickerson & Co.	"	162
Hammond, Edwinna A., Mrs.	"	10
Handren, Kitty G., Mrs.	"	15
Hanson, William S.	"	5
Harding, Louis B.	"	100
Harding, William F.	"	150
Haskins, Frederic C.	"	350
Hauthaway, Clarence L.	"	10
Hawes, Alice M.	"	40
Hawes, Marion A.	"	40
Hawes, Tewksbury & Co.	"	15
Hayden, Stone & Co.	"	2,843
Head & Co., Charles	"	169
Heagan, Cecelia M., Mrs.	"	12
Hinshaw & Co., Francis	"	225
Herrick, Sophia W., Mrs.	"	5
Heywood, C. Fay	"	4
Hill, Flagg M.	"	2
Hill, James N.	"	2
Hill, John J.	"	4,474
Hill, William H.	"	25
Hitchcock, Charles C.	"	10
Hobbs, Samuel	"	50
Hoffman, Jacques	"	20
Holden, Mrs. Ida L.	"	50
Hornblower & Weeks	"	2,825

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Hovey, Kenny & Co.,	by H. A. Gallwey, proxy	90
Howes, Anna, Mrs.	"	5
Howland, Charles A., Jr.	"	5
Huckins, Loran E.	"	4
Humphrey, Edward L.	"	1
Humphrey, Mrs. Mary E.	"	5
Hunnewell, Walter	"	400
Hurd, Charlotte H., Mrs.	"	42

	Shares.
Hutchinson, Selma Gibbs	15
Jackson & Curtis	350
Jackson, William H.	10
James, Minerva H.	40
Jeffers, Melvin G.	25
Jodrey, Mary A., Mrs.	25
Johnson, Ira	50
Johnstone, Charles	25
Jones, Arthur H.	5
Jones, Ellen J., Mrs.	10
Judkins, Sanford P.	40
Judson, Theodore	25
Kaufman, Joseph H.	10
Kelly, George H.	5
Kenyon, Frank E.	20
Keyes, Charles A.	100
Kibbe, Mabel G., Mrs.	25
Kimball, Mary A., Miss	5
King, Adelaide J., Mrs.	50
Knickerbaker, Thomas A.	150
Knight, Frederick E.	10
Knight, Lucy, Miss	50
Knowles, Ellen F., Mrs.	8

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Krohn, Eugene,	by H. A. Gallwey, proxy	10
Ladd, Miss Ella H.	"	5
Lamontague, Bartheleim	"	15
Lang, Charles H., Jr.	"	100
Leach, Margaret C.	"	50
Leary, Dennis F.	"	12
Lee, Higginson & Co.	"	330
Leflore, Mary F.	"	10
Legg & Co., Charles E.	"	8
Leland & Co., Arthur S.	"	558
Leonard, Charles F.	"	25
Lesieur, Arthur	"	30
Locke, Warren E.	"	30
Look, Frank L.	"	14
Lovering, Mrs. Eliabeth C.,	"	4
Lovering, Fred W.	"	30
Lowe, Mrs. Minnie Giles	"	25
Lund, John C.	"	30
Mackay, Mrs. Florence S.	"	1
Magnetsky, Gustave	"	40
Malloy, Michael	"	30
Maloney, Thomas D.	"	30
Manning, Mrs. Anna J.	"	30
Marston, Alfred T.	"	5
Marston, Arthur L.	"	5

	Shares.
Marston, Mrs. Emma L.	10
Mason, A. Heywood	300
Mason, Anna B.	50
Mason, Mrs. Anna W.	100
Mason, Miss Carrie C.	5
Mason, Edwin A.	15

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Mason, Lizzie	by H. A. Gallwey, proxy	25
Matthews, William G.	"	50
Maxim, William W.	"	50
McCabe, Mrs. Margaret C.	"	20
McCormick, Bridget T.	"	100
McGee, James Harriet	"	10
McLauthlin, Mrs. N.	"	10
McNeil, William H.	"	5
Melcher, Fred L.	"	75
Melin, A. H.	"	5
Meloy, Henry	"	300
Merriam, Jesse I.	"	10
Messenger, Charles A.	"	130
Millan, Alexander	"	150
Millett, George F.	"	300
Mitchell, Mrs. Rebecca B.	"	25
Morgan, Augusta T.,	by D. Gay Stivers, proxy	25
Morrison, John	by H. A. Gallwey, proxy	9
Morse, Mrs. S. Louise	"	10
Moyle, Catherine C.	"	60
Moyle, Mrs. Ellen	"	20
Mungovan, John F.	"	5
Nason, Miss Isabel E.	"	10
Neth, George J.	"	10
Newborg & Co.	"	530
Nixon, Mrs. Annie W.	"	20
Norcross, Miss Helen B.	"	55
Noyes, Charles R.	"	100
Orne, Mrs. Louisa F.	"	8
Orr, James E.	"	10
Osgood, John S.	"	10

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Osgood, Mrs. Hattie E.	by H. A. Gallwey proxy	10
Otis, Edward O.	"	16
Otis, Ellen L.	"	3
Packard, M. Blanche	"	20
Paine, Webber & Co.	"	6475
Palmer, Samuel	"	50
Parker, Henry W.	"	60
Parker, Morse & Co.	"	100
Parkinson & Burr	"	225

	Shares.
Parlett, Edwin J.	10
Parsons, Mrs. Leonard F.	20
Parsons, William R.	50
Potter, Gertrude W.	16
Patterson, D. Dean	20
Pearmann & Brooks	462
Pattison, Miss Della	25
Perkins & Co., T. H.	330
Pettigrew, Bright & Co.	165
Phipps, Fred O.	30
Pierce, Chauncey H.	50
Pool, James F.	40
Pratt, Miss Marcia J.	10
Peice, William	1
Prince & Co., F. H.	965
Pullen, Albert J.	10
Putnam & Co., C. A.	140
Richardson, Hill & Co.	370
Ricker, Isaac M.	100
Ripley, Angelina F.	1
Robertson, James P.	117
Robertson, Miss Alice J.	5

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Robertson, Mrs. Hannah W., by H. A. Gallwey, proxy..	5
Robie, Thomas I.	5
Rockefeller, Wm. G.	110,000
Rogers, Seth W.	20
Rosen, Sixten A.	3
Russell, Mr. Carrie L. P.	35
Russell, Mrs. Emily	20
Russell, Irving L.	5
Ryan, Charles	500
Ryan, John D., by L. O. Evans & O. L. Dillenbeck, substitute proxies	10
Sargent & Fairchild by H. A. Gallwey, Proxy	70
Savage, Andrew J.	10
Sawyer, Lawrence T.	50
Sawyer, Miss Mary E.	10
Sears, Harold W.	1
Sears, Susan H.	10
Seeley, Eli B.	10
Smith, Charles F.	20
Smith, Iram N.	50
Smith, Jennie J.	5
Snow, Mrs. Patience E.	10
Spaulding, Charles E.	25
Sproul, Francis A.	30
Squire, Allen B. Gdn. of Ruth Curtis Squire	20
Stearns, Ella	10

		Shares.
Stearns, Frank K.	"	10
Stebbins, Arthur C.	"	40
Stevens, Charles E.	"	10
Stewart, Charles M.	"	10
Stewart, Mrs. Isabella H.	"	33
Stephany, James	"	20

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Stoddard, Miss Fannie M., by H. A. Gallwey, proxy....	5
Stoll, Mrs. Anna	10
Stone, Albert	130
Stowe, Luke S.	300
Sturdy, Albert W.	10
Sturtevant, Royal B.	20
Supple, William R.	50
Swan, Mrs. Laura P.	30
Swasey, Fred D.	5
Swift, Mrs. Virginia M.	770
Sykes, David A.	10
Tarbell, Mrs. Anna Tower	25
Thayer, Benjamin B., by L. O. Evans & O. L. Dillenbeck substitute proxies	5
Thissell, Frank O. by H. A. Gallwey, proxy.....	425
Thompson, J. Abbot	25
Thompson, Mary L.	5
Thompson, Towle & Co.	670
Tibbitts, Henry G.	10
Tift, Eliphalet T.	46
Tilden, James A.	10
Tolles, James H.	50
Tolman, Gilbert	5
Torrey, Elbridge	125
Tower, David B.	100
Towle & Fitzgerald	700
Towne, Walter I.	5
Townsend, Edward W.	5
Traiser, Mrs. Fannie J.	50
Trowbridge, Elford P.	50
Tucker, Anthony & Co.	320
Tucker, Lillian C.	3

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Tucker, Ulysses G. by H. A. Gallwey, proxy.....	30
Tufts, Geo. F.	4
Tufts, Miss Helen P.	3
Tuttle, Lucius B.	10
Underhill, Mr. Minnie H.	20
Underhill, S. Augustus	60
Van Drezer, Prentice M.	30
Vose, Frank T.	20

		Shares.
Vose, Lyman T.	"	10
Wadsworth, Alexander S.	"	2
Wainwright & Co., H. C.	"	40
Wallace, Mrs. Ellen B.	"	110
Walsh, William T.	"	35
Webster, Paul H.	"	130
Weld, Grew & Co.	"	115
Whalen, Leverett M.	"	3
White, Mrs. Sarah E.	"	20
Whitin, Katherine S.	"	205
Whittier, Mrs. Henrietta M.	"	5
Whittlesey, Mrs. Augusta P.	"	180
Williams, Charles E.	"	15
Williston & Co., J. R.	"	500
Wolfe, Gordon G.	"	25
Wood, Henry	"	90
Wood, Mrs. Margaret O.	"	5
Wood, Oliver B.	"	200
Woodruff, Harrison S.	"	12
Woods, Miss Hannah Adelaide	"	10
Worcester, Franklin	"	25
Wrenn, Bros. & Co.	"	105
Wright, G. Wallace	"	15
Wright, Hattie B.	"	5

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Ashley, Edmund,	by H. A. Gallwey, Proxy	40
Bowden, William G.	"	58
Crittenden, Samuel W.	"	50
Enslin, Theodore V.	"	10
Ham, Hannah Mrs.	"	20
Hopkins, William D.	"	100
Lothrop, George E.	"	100
Moore, Edward H.	"	25
Morrill, William	"	70
Mueller, Edmund	"	50
Parsons, Lewis G.	"	175
Parsons, Lewis D.	"	900
Patridge, Fred A.	"	200
Pruessing, Hugo E.	"	50
Ranlet, Nettie Potto Mrs.	"	30
Richards, William H., Jr.,	"	50
Spurr, Salome, Mrs.	"	1
Taylor, Josephine S. Mrs.	"	5
Yerrall, Anna M. Mrs.	"	50
Flower & Co.	"	350
Griffith, Arthur L.	"	10
Lovering, Josephine A.	"	8
Moors & Cabot	"	155
Tucker, Hays & Co.	"	1,000

		Shares.
Carter, Alice P. Mrs.	"	600
Carter, William S.	"	10
Forechand, A. Josephine Miss	"	5
Hathaway, Joseph R.	"	10
Hovey, H. Adelaide, Mrs.	"	50
Huke, Herman, W.	"	250

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Kelley, Ahira,	by H. A. Gallwey, proxy	15
Ludwig, Frank P.	"	5
Maynard, Henry E.	"	10
May, John W.	"	5
McGamley, William F.	"	100
Morrill, Harriet S.	"	5
Nichols, Annie G. Mrs.	"	25
Packard, Alfred S.	"	120
Perkins, Harriet C. Mrs.	"	19
Rodiman, Frederick W.	"	40
Sanford, Mabel L. Mrs.	"	150
Sanford, Mabel D.	"	50
Wrodley, Alfred C.	"	15
Brown, Charles R.	"	10
Chipman, Edith G. Miss	"	10
Chipman, Henry W.	"	15
Cook, Charles W.	"	20
Falconer, Robert A.	"	450
Fox, Jacob L.	"	100
Jones, Isabel Abbe	"	5
Kenwick, Catherine N. C.	"	1
Migeon, Elizabeth F.	"	200
Rogers, Edward C.	"	100
Hiuch, Alice R. Adm.	"	10
Chipman, Harriet E. Miss	"	5
Cushman, William W.	"	20
Manadue, John H.	"	25
Isbell, Sidney M.	"	40
Pudor, Elizabeth H.	"	50
Allen, Grace B.	"	1

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Burge, Wm. P.,	by H. A. Gallwey, proxy	10
Clarke, Charlie F.	"	50
Collins, Jennie A.	"	20
Ellis, George M.	"	20
French, Ellen S.	"	10
Gilbert, Chas. C.	"	120
Goward, Edwin T.	"	20
Hamlin, L. C.	"	40
Hassell, Chas. O.	"	10
Hill, Chas. S.	"	20

	Shares.
Martin, Michael	20
McClench, Ella A.	5
McClench, E. J.	60
Minot, Sarah T.	15
Mitchell, Thomas	50
Noonan, Patrick	75
Pettigill, Mrs. Lucy E.	12
Phipps, Viola	20
Reynolds, Edwin	30
Rich, Mary W.	20
Schaefer, Lennie	30
Seaver, Chas. J.	50
Sharpleigh, Abbie E.	10
Sharpleigh, Amelia	25
Shourds, Chas. F.	100
Smith, Frank L.	60
Sweet, Walter A.	25
Trowbridge, Winston J.	150
Barkell, Chas.	10
Curnow, John U.	7
Noone, Thos. F.	40
300	
Reilly, Wm. B., by H. A. Gallwey, proxy	20
Royce, Arthur M.	10
Royce, Fred M.	20
Sullivan, W. M.	10
Sutton, Geo. H.	50
Esselstrun, Sophie	40
Arakelyan, Jacob J.	150
Edwards, Jonathan P.	50
Morrill, Florence N.	10
Smith, George M.	10
Topham, John A.	40
Gallwey, H. A. (in person)	10
McMahon, Jas. (in person)	70
John Morgan (in person)	45
Knight, Mary G. Knight, by W. D. Kyle, proxy	225
Foss, Lewis	200
Bradford, Isaac	150
Jackson, Henry B.	800
Wall, Wm. E.	1000
Richardson, Benjamin P.	10
Richardson, B. Heber	1125
Total	170,957

It appearing that there was represented at the meeting in person or by proxy, stockholders owning or representing a total of 170,957 shares out of the total issued stock of 229,850 shares, and that the

same constituted more than two-thirds of the entire capital stock of the Company, the meeting was duly organized as follows:

301 On motion duly made and seconded, Mr. H. A. Gallwey was nominated and elected Chairman of the meeting, 170,957 shares of the capital stock of the Company being cast in favor of such selection; whereupon Mr. Gallwey took the chair.

On motion duly made and seconded, Mr. O. L. Dillenbeck, a suitable person, was unanimously elected Secretary of the meeting.

The Chairman thereupon announced that proof had been made by the affidavits of Mr. O. L. Dillenbeck, the Chief Clerk of the Company, and also by Mr. B. V. Alley, the principal clerk of the Butte Inter Mountain, a daily newspaper published in the City of Butte, County of Silver Bow, and State of Montana, that notice had been duly given by mailing and publication to the stockholders of the Company, as required by law.

Said affidavits were exhibited at the meeting, filed with the Secretary, and are respectively in the following form:

STATE OF MONTANA,

County of Silver Bow, ss:

Affidavit of O. L. Dillenbeck.

O. L. DILLENBECK, being first duly sworn, says on oath: That he is now, and was on the 28th and 30th days of March, 1910, a Chief Clerk employed in the General Office of the Parrot Silver and Copper Company, at Butte, Montana; that affiant, on the 28th and 30th days of March, 1910, while acting in the said capacity as Chief Clerk of said Company, and under instructions from the Board of Directors and the Secretary of said Company, deposited the following notice of the Special Meeting of the Stockholders of said Company, to be held at the principal office of the Company, in the

Hennessy Building, in the City of Butte, County of Silver
302 Bow, State of Montana, in the United States post office, at Butte, Montana, in a suitable envelope, with postage prepaid thereon, directed and addressed to each stockholder of record of the above named Company, by his name and to his place of residence appearing on the books of said Company at the time of closing said books, on the 30th day of March, 1910.

Affiant says that he also caused the same notice to be published daily, in the Butte Inter Mountain, a daily newspaper of general circulation, published at the City of Butte, County and State aforesaid, said City of Butte being the principal place of business of said corporation, from the 28th day of March, A. D. 1910, to the 29th day of April, A. D. 1910, both inclusive, and that said notice was published in each issue of said newspaper during all of said time, as aforesaid:

Notice of Special Meeting of Stockholders of Parrot Silver and Copper Company.

BUTTE, MONTANA, March 28th, 1910.

To the Stockholders of the Parrot Silver and Copper Company:

In accordance with a resolution adopted by the Board of Directors of the Parrot Silver and Copper Company, on the 14th day of February, A. D. 1910, Notice is Hereby Given that a Special Meeting of the Stockholders of the above named Company will be held at the principal office of the Company, in the Hennessy Building, in the City of Butte, County of Silver Bow, State of Montana, on Saturday, the 30th day of April, A. D. 1910, at the hour of 11 o'clock A. M., for the purpose of considering a proposition to sell and dispose of the whole of the property and assets of every kind, character and description, real, personal and mixed, corporeal, 303 incorporeal, in law and in equity, owned by the above named Company or belonging thereto, to the Anaconda Copper Mining Company, a Montana corporation, for a part of the capital stock of the said Anaconda Copper Mining Company, and for the transaction of any other business which may lawfully be considered at such meeting.

Notice is also hereby given that for the purpose of the above meeting, the Transfer Books of the Company will be closed at 3 o'clock P. M. on the 30th day of March, 1910, and reopened at 10 o'clock A. M. on the 2nd day of May, 1910.

By order of the Board of Directors of the Parrot Silver and Copper Company,

A. H. MELIN, *Secretary.*
O. L. DILLENBECK.

Subscribed and sworn to before me this 29th day of April, A. D. 1910.

[SEAL.]

T. E. CONRAD,
Notary Public for the State of Montana,
Residing at Butte, Montana.

My commission expires Sept. 10, 1912.

STATE OF MONTANA,
County of Silver Bow, ss:

Affidavit of B. V. Alley.

B. V. ALLEY, being first duly sworn, says on oath: That he is now and was on March 28, 1910, the Principal Clerk of the Butte Inter Mountain, a daily newspaper of general circulation published in the City of Butte, County and State aforesaid; that the following notice was received by affiant as such Principal Clerk, from O. L. Dillenbeck, Chief Clerk for the Parrot Silver and Copper 304 Company, and that affiant was instructed to cause the publication of the said notice in said newspaper daily during a

period beginning on and including the 28th day of March, A. D. 1910, up to and including the 29th day of April, A. D. 1910.

Affiant further says that, pursuant to said instructions, the said notice was inserted in the regular issue of said newspaper printed on the 28th day of March, A. D. 1910, and that said notice has been published daily in the regular issue of said paper up to and including the issue of April 29, A. D. 1910. That said City of Butte is the principal place of business of said corporation herein mentioned.

Notice of Special Meeting of Stockholders of Parrot Silver and Copper Company.

BUTTE, MONTANA, March 28, 1910.

To the Stockholders of the Parrot Silver and Copper Company:

In accordance with a resolution adopted by the Board of Directors of the Parrot Silver and Copper Company on the 14th day of February, A. D. 1910, Notice is Hereby Given that a Special Meeting of the Stockholders of the above named Company will be held at the principal office of the Company in the Hennessy Building, in the City of Butte, County of Silver Bow, State of Montana, on Saturday, the 30th day of April, A. D. 1910, at the hour of 11 o'clock A. M., for the purpose of considering a proposition to sell and dispose of the whole of the property and assets of every kind, character and description, real, personal and mixed, corporeal and incorporeal, in law and in equity, owned by the above named Company or belonging thereto, to the Anaconda Copper Mining Company, a Montana corporation, for a part of the capital stock of the said 305 Anaconda Copper Mining Company, and for the transaction of any other business which may lawfully be considered at such meeting.

Notice is also hereby given that for the purpose of the above meeting, the Transfer Books of the Company will be closed at 3 o'clock P. M. on the 30th day of March, 1910, and re-opened at 10 o'clock A. M. on the 2nd day of May, 1910.

By order of the Board of Directors of the Parrot Silver and Copper Company.

A. H. MELIN, *Secretary.*

B. V. ALLEY.

Subscribed and sworn to before me this 29th day of April, A. D. 1910.

[SEAL.]

CARL J. CHRISTIAN,
Notary Public for the State of Montana,
Residing at Butte, Montana.

My commission expires March 14th, 1913.

Thereupon, the Chairman appointed Mr. D. Gay Stivers and Mr. L. O. Evans a committee to examine and report upon the number and corrections of the proxies filed with the Secretary, and the said committee, after an examination of said proxies, reported in writing

to the meeting that there were filed with the Secretary certain proxies of the stockholders of the Company, all of which were regular, correct and satisfactory, representing 170,957 shares of the capital stock of the Company, which said shares of stock, and the owners or representatives thereof, are hereinbefore spread upon the minutes of this meeting.

On motion duly made, and seconded and unanimously
306 adopted, the report of the committee was adopted.

Thereupon, the said proxies were exhibited to the meeting and, after examination, were filed by the Secretary in his office.

The Chairman then stated to the meeting the purposes for which the same had been called, and the Secretary of the meeting read to the meeting the written report of a committee, consisting of Mr. F. P. Addicks and Mr. H. A. Gailwey, President and General Manager of the Company respectively, which report gave a full description of the mines, concentrator and smelter of the Company with the equipment thereon, and attached to which report was a detailed property list of the Company.

Upon motion duly made, seconded and unanimously adopted the said report was ordered received and placed on file with the Secretary of the Company.

Whereupon, the following resolution was introduced:

"Whereas, at a special meeting of the Board of Directors of this Company, held at the office of the Company, 42 Broadway, New York City, New York, on Monday, the 14th day of February, A. D. 1910, it was decided to call a special meeting of the stockholders of this Company on the 30th day of April, A. D. 1910, at 11 o'clock A. M., for the purpose of considering a proposition to sell and dispose of all of the property and assets owned or possessed by this Company, of every kind and character, real, personal and mixed, corporeal and incorporeal, in law and in equity, for a portion of the capital stock of the Anaconda Copper Mining Company; and

"Whereas, said special meeting of the stockholders for the purposes aforesaid, was also called and authorized by the Board of Directors at a meeting duly held at its said office in New York City, on February 3, 1910, and by postponements thereof

307 at said meeting of February 14, 1910; and

"Whereas, at said meeting of February 3, 1910, a committee consisting of Mr. F. P. Addicks and Mr. H. A. Gailwey, President and General Manager of the Company respectively, was appointed for the purpose of investigating into the condition of the Company, and ascertaining the nature and extent of its holdings, property and assets, and also for the purpose of conferring with a similar committee appointed by the Board of Directors of the Anaconda Copper Mining Company, in an endeavor to arrive at a definite proposition which might be submitted to the shareholders of this Company at this meeting, and

"Whereas, the said committee representing this Company has submitted its report, which said report had been duly received and placed on file with the Secretary of the Company, and in which

said report the said committee recommended and advised the sale and disposal of all of the property and assets of this corporation for 90,000 shares of the capital stock of the Anaconda Copper Mining Company; and it further appearing that the shareholders of the Anaconda Copper Mining Company, at a special meeting of the stockholders of such company, held at the office of the Company, in the City of Anaconda, on the 23rd day of March, A. D. 1910, authorized and directed that the capital stock of the Anaconda Copper Mining Company should be increased from its present authorized and issued amount of 1,200,000 shares, having a par value of \$25.00 per share, to 6,000,000 shares, having a like par value of \$25.00 per share, and that the officers of said stockholders' meeting have taken the necessary steps in accordance with law to make such increase effective, and it further appearing that no part of such increase of stock has been issued, and that the officers and

308 directors of the Anaconda Copper Mining Company have offered to purchase all of the property and assets of every kind, character and description, owned or possessed by this corporation, issuing to this corporation in exchange and payment therefor 90,000 shares of the capital stock of said Anaconda Copper Mining Company; be it

"Resolved, that this Company proceed to sell, assign, transfer, convey and dispose of all of the property of every kind or character, real, personal and mixed, corporeal and incorporeal, in law and in equity, wherever the same may be situated, owned or possessed by it, to the said Anaconda Copper Mining Company, provided the Anaconda Copper Mining Company will issue and deliver to this Company, in payment therefor, 90,000 shares of the capital stock of the said Anaconda Copper Mining Company, and be it further

"Resolved, that the Board of Directors and officers of this Company be, and they are hereby, authorized, empowered and directed to do and perform each and every act necessary and requisite to fully carry out and make effective the provisions and intent of this resolution, in accordance with law, so as to fully and completely divert this Company of all right, or claim of right, title or claim of title, in or to all or any of the above specified property, and to pass all and every right, title and interest of this Company in and to said property, to the said Anaconda Copper Mining Company; and be it further

309 "Resolved, that the officers of this Company be, and they are hereby, specially authorized, empowered and directed to make such sale, transfer and conveyance, above provided for, as of March 31, 1910, or such other date as may be agreed upon by them and the officers of the Anaconda Copper Mining Company, and to provide for the closing of the general books, accounts and business of this Company; also, to ascertain the exact condition of affairs of this Company as of such date as may be fixed, and to agree with the said Anaconda Copper Mining Company that the said last named Company shall take over the said business of this Company from and after such agreed date. The said Anaconda Copper Mining Company, as a condition to the sale aforesaid, to assume, carry out and fully discharge all of the obli-

gations and liabilities, of every kind and character, whether in contract or on tort, and whether now or hereafter enforce-able against this Company, and to fully and completely perform all valid executory provisions of any contract or contracts which may exist at the date of the completion of the said transfer and conveyance. The officers of this Company are authorized to assign and transfer all benefits accrued, or which may thereafter accrue, from any and all contracts, agreements or obligations to which this Company is a party, or in which this Company has directly or indirectly any interest whatsoever, to the said Anaconda Copper Mining Company; also, to vest in the Anaconda Copper Mining Company all right, title and interest of every kind and character, which this Company may have in or to the accounts receivable, surplus and business of this Company, as the same shall exist at the close of business on the date so agreed upon as aforesaid, and until the business and affairs of this Company are actually taken over by the said Anaconda Copper Mining Company; it being the purport and intention of this resolution to authorize and vest in the officers of this Company each and every power and authority which may be necessary or required by law to enable said officers to divest and convey away from this Company absolutely and completely all of its right, title and interest in and to every kind and species of property which it now holds or may then hold, and to vest title in the same

in the said Anaconda Copper Mining Company upon receipt
 310 of the above number of shares of its said capital stock and to authorize the officers of this Company to enter into such contracts and agreements with the said Anaconda Copper Mining Company as may be necessary to close up the general business and affairs of this Company; giving and granting unto them full power and authority to make, execute, acknowledge and deliver deeds of conveyance, assignments, transfers, stipulations, or such other instruments as may be necessary to fully carry out the provisions and purposes of this resolution."

Upon motion duly made and seconded, that the said resolution be adopted, the following shareholders voted in favor of said resolution.

	Shares.
Addicks, Frederick P., by H. A. Gallwey, proxy.....	10
Alden, Charles B. ".....	3
Aldrich, Helen C. ".....	10
Alland, Morse J. ".....	250
Alland, Samuel ".....	275
Allis, D. Hurlbut ".....	10
Andrews, Emily, Mrs. ".....	10
Anthony, David M. ".....	300
Arnold, Julia, Miss ".....	5
Baker, Ellen Talbot, Mrs. ".....	500
Baker, Emily F. ".....	5
Baker, George H. ".....	100
Barker, Alfred ".....	10
Barry, Esther S., Miss ".....	10

		Shares.
Bartlett Bros. & Co.	"	70
Bartlett, Ella M.	"	2
Baxter, Pollie L., Miss	"	4
Beckman, F. H.	"	800

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Beekman, Gabriel E., by H. A. Gallwey, proxy	100
Benjamin, Annie L.	500
Bennett, Harriet S., Miss	20
Berry, Clarence M.	15
Berry, Harry	50
Bevins, Leonard J.	16
Bird, William W.	10
Bond, Annie W.	2
Booth, Alfred	25
Borek, Paul	10
Bowen & Co., J. W.	2,390
Boynton, William F.	50
Boynton, W. Herbert	50
Bradford, George H.	16
Bradlee & Cutler	445
Bradway, Charles A.	10
Bradley, Jasper W., Jr.	20
Brown, Alice Tufts	3
Brown, Clarissa P., Mrs.	6
Brown, John M.	150
Burnham, Gertrude P., Miss	14
John A. Burnham, Wm. A.	
Burnham, Henry S. Burn-	
ham, Trustee for J. A.	
Burnham, and Henry S.	
Burnham	75
Burns, James A.	5
Burt, Solon	100
Buttrick, Sarah J., Miss	2
Calgren, Antone J.	40
Campbell, Catherine C.	15
Capen, Samuel B.	100
Carleton, Frank H.	10

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Carleton, Mary J., by H. A. Gallwey, proxy	10
Carter, Alice M., Miss	5
Carter, Herbert W.	25
Cass, Arthur T.	5
Cassidy, Rose C., Mrs.	10
Chadwick, George W.	160
Chadwick, Mary T., Mrs.	28
Chase, Charles A.	20
Chase, Charles H.	100

	Shares.
Chase, Frank T.	15
Chase, Sidney	50
Chase & Barstow	3,654
Chatfield, Henry H.	30
Church, Fred C.	50
Churchill, Frank N.	10
Clark, James D.	20
Clark, Samuel A.	2
Clay, E. C.	8
Cleland, Rebecca Helen, Miss	10
Clement, Parker & Co.	125
Cofran, George P.	20
Coit, Caroline E., Miss	2
Coit, Emily A.	10
Cooke, Edward C.	25
Coolidge, Nancy M.	5
Courtney, Dennis	4
Coveney, James J.	5
Crafts, Henry W.	50
Crane, Levi L.	50
Crocker, Eliza A., Miss	2
Crosby, Abbi F., Miss	12

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Crossman, Mary E.	by H. A. Gallwey, proxy	20
Cunings, Leander W.	"	90
Curtis & Sanger	"	150
Cushman, Edward D.	"	50
Dabney & Co., F. L.	"	100
Dadman, William E.	"	125
Danforth, Joseph W.	"	8
Danielson, Petra, Miss	"	10
Darr & Moore	"	465
Davis, Annie D.	"	16
Davis, Lucy B., Miss	"	3
Day & A. R. L.	"	52
Dearborn, Frank A.	"	54
Dearborn, George W.	"	50
Dinsmore, Mary E.	"	85
Diviney, James J.	"	1
Downer & Co.	"	535
Doyle, Thos. L.	"	120
Drumm, Thos. J., Trustee		
Est. John Hargate.	"	10
Dubois, Ernest W.	"	98
Dudley, Wilbur, Sr.	"	10
Duncan, George H.	"	2
Durgin, Park & Co.	"	50
Edwards, Fannie C., Mrs.	"	20
Eiseman, Albert	"	200

	Shares.
Engelder, Conrad	10
English, Walter C.	20
Estabrook & Co.	150
Everett, Annah W.	25
Fabens, Frank P.	10

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Fabyan, George,	Gallwey, proxy	2
Fallon, Kate, Mrs.	"	25
Farrington, Laura J., Mrs.	"	5
Fay, George A.	"	30
Fenno, Henry A.	"	5
Field, Henry P.	"	35
Fineyl, Caroline B.	"	100
Fisher, Augustus M.	"	50
Fisk, Daniel	"	20
Fisk, Ella W.	"	10
Fletcher, George N.	"	250
Foley & Smith	"	50
Foster, Frederick A.	"	20
Fowler, S. Charles	"	50
French, George B.	"	50
French, Sarah B.	"	5
Friedstein, Hyman	"	30
Frisbie, Harriet M., Mrs.	"	10
Fuller, Mabel K., Mrs.	"	25
Gage, Carlos M.	"	40
Gallinger, Jacob H.	"	25
Gay & Sturgis	"	89
George, Charles P.	"	100
Gleason, Charles A.	"	30
Glynn, Christine	"	29
Glynn, Elizabeth	"	20
Goodrich, Gertrude H., Mrs.	"	10
Gordon, Silas D.	"	10
Gould, Charles E.	"	10
Gould, Emma D., Miss	"	5
Gove & Co., W. A.	"	60

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Grafius, Andrew B.,	bu H. A. Gallwey, proxy	10
Grant, Elwin E.	"	10
Grons, Herbert H.	"	25
Green, Fred C.	"	10
Greenleaf, Lyman B.	"	240
Hale, Albert E.	"	30
Hale & Co.	"	55
Hall, Mollie W., Miss	"	17
Halle & Stieglitz	"	15
Hamlin, Joseph P.	"	200

		Shares.
Hamlin, Nicherson & Co.	"	162
Harmon, Edwinina A., Mrs.	"	10
Handren, Mrs. Kittie G.	"	15
Hanson, William S.	"	5
Harding, Louis B.	"	100
Harding, William F.	"	150
Haskins, Frederic C.	"	350
Hauthaway, Clarence L.	"	10
Hawes, Alice M.	"	40
Hawes, Marion A.	"	40
Hawes, Tewksbury & Co.	"	15
Hayden, Stone & Co.	"	2,843
Head & Co., Charles	"	169
Heagan, Cecelina M., Mrs.	"	12
Hinshaw & Co., Francis	"	225
Herrick, Sophia W., Mrs.	"	5
Heywood, C. Fay	"	4
Hill, Flagg M.	"	2
Hill, James N.	"	2
Hill, John J.	"	4,472

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Hill, William H.	by H. A. Gallway, proxy.	25
Hitchcock, Charles C.	"	10
Hobbs, Samuel	"	50
Hoffman, Jacques	"	20
Holden, Mrs. Ida L.	"	50
Hornblower & Weeks	"	2,825
Hovey, Kenny & Co.	"	90
Howes, Anna, Mrs.	"	5
Howland, Charles A., Jr.	"	5
Huckins, Loran E.	"	4
Humphreys, Edward L.	"	1
Humphrey, Mrs. Mary E.	"	5
Hunnewell, Walter	"	400
Hurd, Charlotte H., Mrs.	"	42
Hutchinson, Selma Gibbs	"	15
Jackson & Curtis	"	350
Jackson, William H.	"	10
James, Minerva H.	"	40
Jeffers, Melvin G.	"	25
Jodfrey, Mary A., Mrs.	"	25
Johnson, Ira	"	50
Johnstone, Charles	"	25
Jones, Arthur H.	"	5
Jones, Ellen J., Mrs.	"	10
Judkins, Sanford P.	"	40
Judson, Theodore	"	25
Kaufman, Joseph H.	"	10
Kelly, George H.	"	5

		Shares.
Kenyon, Frank E.	"	20
Keyes, Charles A.	"	100

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Kibbe, Mabel G., Mrs., by H. A. Gallwey, proxy	25
Kimball, Mary A., Miss	5
King, Adelaide, J., Mrs.	50
Knickerbaker, Thomas A.	150
Knight, Frederick E.	10
Knight, Lucy, Miss	50
Knowles, Ellen F., Mrs.	8
Krohn, Eugene	10
Ladd, Miss Ella H.	5
Lamontague, Barthelheim	15
Lang, Charles H., Jr.,	100
Leach, Margaret C.	50
Leary, Dennie F.	12
Lee, Higginson & Co.	330
Leflore, Mary F.	10
Legg & Co., Charles E.	8
Leland & Co., Arthur S.	558
Leonard, Charles F.	25
Lesieur, Arthur	30
Locke, Warren E.	30
Look, Frank L.	15
Lovering, Mrs. Elizabeth C.	4
Lovering, Fred W.	30
Lowe, Mrs. Minnie Giles	25
Lund, John C.	30
Mackay, Mrs. Florence S.	1
Magnetsky, Gustave	40
Malloy, Michael	30
Maloney, Thomas D.	30
Manning, Mrs. Anna J.	30

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Marston, Alfred T., by H. A. Gallwey, proxy	5
Marston, Arthur L.	5
Marston, Mrs. Emma L.	10
Mason, A. Heywood	300
Mason, Anna B.	50
Mason, Mrs. Anna W.	100
Mason, Miss Carrie C.	5
Mason, Edwin A.	15
Mason, Lizzie	25
Matthews, William G.	50
Maxim, William W.	50
McCabel, Mrs. Margaret C.	20
McCormick, Bridget T.	100
McGee, James	10

		Shares.
McLauthlin, Mrs. Harriet N.	"	10
McNeil, William H.	"	5
Melcher, Fred L.	"	65
Melin, A. H.	"	5
Meloy, Henry	"	300
Merriam, Jesse I.	"	10
Messenger, Charles A.	"	130
Millan, Alexander	"	150
Millett, George F.	"	300
Mitchell, Mrs. Rebecca B.	"	25
Morgan, Augustus T.,	by D. Gay Stivers, proxy.	25
Morrison, John,	by H. A. Gallwey, proxy.	9
Morse, Mrs. S. Louise	"	10
Moyle, Catherine C.	"	60
Moyle, Mrs. Ellen	"	20
Mungovan, John F.	"	5
Nason, Miss Isabel E.	"	10

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Neth, George J.,	by H. A. Gallwey, proxy.	10
Newborg & Co.	"	530
Nixon, Mrs. Annie W.	"	20
Norcross, Miss Helen E.	"	55
Noyes, Charles R.	"	100
Orne, Mrs. Louisa F.	"	8
Orr, James E.	"	10
Osgood, John S.	"	10
Osgood, Mrs. Mattie E.	"	10
Otis, Edward O.	"	16
Otis, Ellen L.	"	3
Packard, M. Blanche	"	20
Paine, Webber & Co.	"	6,475
Palmer, Samuel	"	50
Parker, Henry W.	"	60
Parker, Morse & Co.	"	100
Parkinson & Burr	"	225
Parlett, Edwin J.	"	10
Parsons, Mrs. Leonard F.	"	20
Parsons, William R.	"	50
Potter, Gertrude W.	"	16
Patterson, D. Dean	"	20
Pearmann & Brooks	"	462
Pattison, Miss Della	"	25
Perkins & Co., T. H.	"	330
Pettigrew, Bright & Co.	"	165
Phipps, Fred O.	"	30
Pierce, Chauncey H.	"	50
Pool, James F.	"	40
Pratt, Miss Marcia J.	"	10
Price, William	"	1
Prince & Co., F. H.	"	965

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	Shares.
Pullen, Albert J. by H. A. Gallwey, proxy.....	10
Putnam & Co., C. A. ".....	140
Richardson, Hill & Co. ".....	370
Ricker, Isaac M. ".....	100
Ripley, Angelina F. ".....	1
Robertson, James P. ".....	117
Robertson, Miss Alice J. ".....	5
Robertson, Mrs. Hannah W. ".....	5
Robie, Thomas I. ".....	5
Rockefeller, Wm. G. ".....	110,000
Rogers, Seth W. ".....	20
Rosen, Sixten A. ".....	3
Russell, Mrs. Carrie L. P. ".....	35
Russell, Mrs. Emily ".....	20
Russell, Irving L. ".....	5
Ryan, Charles ".....	500
Ryan, John D., by L. O. Evans & O. L. Dillenbeck, substitute proxies.....	10
Sargeant & Fairchild, by H. A. Gallwey, proxy.....	70
Savage, Andrew J. ".....	10
Sawyer, Lawrence T. ".....	50
Sawyer, Miss Mary E. ".....	10
Sears, Harold W. ".....	1
Sears, Susan H. ".....	10
Seeley, Eli B. ".....	10
Smith, Charles F. ".....	20
Smith, Iram N. ".....	50
Smith, Jennie J. ".....	5
Snow, Mrs. Patience E. ".....	10
Spaulding, Charles E. ".....	25
Sproul, Francis A. ".....	30
Squire, Allen B. Gdn. of Ruth Curtis Squire ".....	20

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Stearns, Ella, by H. A. Gallwey, proxy.....	10
Stearns, Frank K. ".....	10
Stebbins, Arthur C. ".....	40
Stevens, Charles E. ".....	10
Stewart, Charles M. ".....	10
Stewart, Mrs. Isabella H. ".....	33
Stephany, James ".....	20
Stoddard, Miss Fannie M. ".....	5
Stoll, Mrs. Anna ".....	10
Stone, Albert ".....	130
Stowe, Luke S. ".....	300
Sturdy, Albert W. ".....	10
Sturtevant, Royal B. ".....	20
Supple, William R. ".....	50

		Shares.
Swan, Mrs. Laura P.	"	30
Swasey, Fred D.	"	5
Swift, Mrs. Virginia M.	"	770
Sykes, David A.	"	10
Tarbell, Mrs. Anna Tower	"	25
Thayer, Benjamin B., by L. O. Evans & O. L. Dillenbeck,		
substitute proxies		5
Thissell, Frank O., by H. A. Gallwey, proxy		425
Thompson, J. Abbot	"	25
Thompson, Mary L.	"	5
Thompson, Towle & Co.	"	670
Tibbitts, Henry G.	"	10
Tifft, Eliphalet T.	"	46
Tilden, James A.	"	10
Tolles, James H.	"	50
Tolman, Gilbert	"	5
Torrey, Elbridge	"	125
Tower, David B.	"	100
322		
Towle & Fitzgerald, by H. A. Gallwey, proxy		700
Towne, Walter I.	"	5
Townsend, Edward W.	"	5
Traiser, Mrs. Fannie J.	"	50
Trowbridge, Elford P.	"	50
Tucker, Anthony & Co.	"	320
Ticker, Lillian C.	"	3
Tucker, Ulysses G.	"	30
Tufts, Geo. F.	"	4
Tufts, Miss Helen P.	"	3
Tuttle, Lucius B.	"	10
Underhill, Mrs. Minnie H.	"	20
Underhill, S. Augustus	"	60
Van Drezer, Prentice M.	"	30
Vose, Frank T.	"	20
Vose, Lyman T.	"	10
Wadsworth, Alexander S.	"	2
Wainwright & Co. H. C.	"	40
Wallace, Mrs. Ellen B.	"	110
Walsh, William T.	"	35
Webster, Paul H.	"	130
Weld, Grew & Co.	"	115
Whalen, Leverett M.	"	3
White, Mrs. Sarah E.	"	20
Whitin, Katherine S.	"	205
Whittier, Mrs. Henrietta M.	"	5
Whittlesey, Mrs. Augus P.	"	180
Williams, Charles E.	"	15
Williston & Co. J. R.	"	500
Wolfe, Gordon G.	"	25
Wood, Henry	"	90

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Shares.

Wood, Mrs. Margaret O., by H. A. Gallwey, Proxy	5
Wood, Oliver B.	200
Woodruff, Harrison S.	12
Woods, Miss Hannah Adelaide	10
Worcester, Franklin	25
Wrenn, Bros. & Co.	105
Wright, G. Wallace	15
Wright, Hattie B.	5
Askley, Edmund	40
Bowden, William G.	58
Crittenden, Samuel W.	50
Enslin, Theodore V.	10
Hopkins, William D.	100
Lothrop, George E.	100
Moore, Edward H.	25
Morrill, William	70
Mueller, Edmind	50
Parsons, Lewis S.	175
Persons, Lewis D.	900
Patridge, Fred A.	200
Pruessing, Hugo F.	50
Ranlet, Nettit Potto Mrs.	30
Richards, William H., Jr.	50
Spurr, Salome Mrs.	1
Taylor, Josephine S. Mrs.	5
Yerrall, Anna M. Mrs.	50
Flower & Co.	350
Griffith, Arthur L.	10
Lovering, Josephine A.	8
Moors & Cabot	155
Ticker Hays & Co.	1,000

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Carter, Alice P. Mrs., by H. A. Gallwey, proxy	600
Carter, William S.	10
Forehand, A. Josephine Miss	5
Hathaway, Josephine R.	10
Hovey, H. Adelaide Mrs.	50
Huke, Herman W.	250
Kelly, Ahira	15
Ludwig, Frank P.	5
Maynard, Henry E.	10
May, John W.	5
McGamley, William F.	100
Morrill, Harriet S.	5
Nichols, Annie G. Mrs.	25
Packard, Alfred S.	120
Perkins, Harriet C. Mrs.	19
Rodiman, Frederick W.	40

		Shares.
Sanford, Mabel L. Mrs.	"	150
Sanford, Mabel D.	"	50
Wordley, Alfred C.	"	15
Brown, Charles R.	"	10
Chipman, Edith G. Miss	"	10
Chipman, Henry W.	"	15
Chipman, Harriet E. Miss	"	5
Cook, Charles W.	"	20
Falconer, Robert A.	"	450
Fox, Jacob L.	"	100
Kenwick, Catherine N. C.	"	1
Migeon, Elizabeth F.	"	200
Rogers, Edward C.	"	100
Hinch, Alice R. Admx.	"	10
Jones, Isabel Abbe	"	5

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Cushman, William W., by H. A. Gallwey, proxy.....		20
Menadue, John H.	"	25
Isbell, Sidney M.	"	40
Pudor, Elizabeth H.	"	50
Allen, Grace B.	"	1
Burge, Wm. P.	"	10
Clarke, Charlie F.	"	50
Collins, Jennie A.	"	20
Ellis, George M.	"	20
French, Ellen S.	"	10
Gilbert, Chas. C.	"	120
Goward, Edwin T.	"	20
Hamlin, L. C.	"	40
Hassell, Chas. O.	"	10
Hill, Chas. S.	"	20
Martin, Michael	"	20
McClench, Ella A.	"	5
McClench, E. J.	"	60
Minot, Sarah T.	"	15
Mitchell, Thomas	"	50
Noonan, Patrick	"	75
Pettingill, Mrs. Lucy E.	"	12
Phipps, Viola	"	20
keynolds, Edwin	"	30
Rich, Mary W.	"	20
Schaefer, Lennie	"	30
Seaver, Chas. J.	"	50
Sharpleigh, Abbie E.	"	10
Sharpleigh, Amelia	"	25
Shourds, Chas. F.	"	100
Smith, Frank L.	"	60

	Shares.
Sweet, Walter A., by H. A. Gallwey, proxy.....	25
Trowbridge, Winston J.	150
Barkell, Chas.	10
Curnow, John U.	7
Noone, Thos F.	40
Reilly, Wm. B.	20
Royce, Arthur M.	10
Royce, Fred M.	20
Sullivan, W. M.	10
Sutton, Geo. H.	50
Esselstrun, Sophie	40
Arakalan, Jacob J.	150
Edwards, Jonathan P.	50
Morrill, Florence H.	10
Smith, George M.	10
Topham, John A.	40
Gallwey, H. A. (In person)	10
McMahon, James (In Person)	70

Total voting in favor of said resolution 167,382

The following shareholders voted against the said resolution:

	Shares.
Morgan, John (In person)	45
Ham, Hannah, by H. A. Gallwey, proxy.....	20
Knight, Mary G., by W. D. Kyle, proxy.....	225
Foss, Lewis	200
Bradford, Isaac	150
Jackson, Henry B.	800
Wall, Wm. E.	1,000
Richardson, Benjamin P.	10
Richardson, B. Heber	1,125

Total shares voted against said resolution..... 3,575

327 It appearing that 167,382 shares, being more than two-thirds of the entire capital stock of the company, had voted in favor of said resolution, and 3,575 shares against the said resolution the said resolution was by the Chair declared duly carried, and the officers of the company were instructed to carry its purport into full operation and effect.

Upon motion duly made, seconded and unanimously adopted, the said meeting was adjourned to meet again on Thursday, the 12th day of May, A. D. 1910, at 11 o'clock A. M.

H. A. GALLWEY, *Chairman.*

O. L. DILLENBECK, *Secretary.*

STATE OF MONTANA,
County of Silver Bow, ss:

H. A. Gallwey, being first duly sworn, says upon oath: That he is the person who acted as Chairman of the Special Meeting of the stockholders of the Parrot Silver and Copper Company, held at the principal office of the Company, in the Hennessy Building, Butte, Silver Bow County, Montana, on the 30th day of April, A. D. 1910; that the foregoing is a copy of the minutes of the proceedings had at such stockholders' meeting, and is a full, true and complete copy of the minutes of said stockholders' meeting, held as aforesaid, at the time and place aforesaid; and that the said minutes show truly and completely all of the proceedings had at the said meeting.

H. A. GALLWEY.

Subscribed and sworn to before me this 30th day of April, A. D. 1910.

[NOTARIAL SEAL.]

T. E. CONRAD,
Notary Public for the State of Montana,
Residing at Butte, Montana.

My commission expires Sept. 10, 1912.

328 STATE OF MONTANA,
County of Silver Bow, ss:

In this 30th day of April, in the year 1910, before me, T. E. Conrad, a Notary Public within and for said County and State, personally appeared H. A. Gallwey, known to me to be the person whose name is subscribed to the foregoing minutes of special meeting of the stockholders of the Parrot Silver and Copper Company, as Chairman thereof, and also to the foregoing affidavit, and acknowledged to me that he executed the said instruments.

In testimony whereof, I have hereunto set my hand and affixed my Notarial Seal the day and year in this Certificate first above written.

[NOTARIAL SEAL.]

T. E. CONRAD,
Notary Public for the State of Montana,
Residing at Butte, Montana.

My Commission expires Sept. 10, 1912.

STATE OF MONTANA,
County of Silver Bow, ss:

O. L. Dillenbeck, being first duly sworn, says upon oath: That he is the person who acted as Secretary of the Special Meeting of the stockholders of the Parrot Silver and Copper Company, held at the principal office of the Company, in the Hennessy Building, Butte, Silver Bow County, Montana, on the 30th day of April, A. D. 1910; that the foregoing is a copy of the minutes of the proceedings had at such stockholders' meeting, and is a full, true and complete copy of the minutes of said stockholders' meeting, held as aforesaid, at the

time and place aforesaid; and that the said minutes show truly and completely all of the proceedings had at the said meeting.

O. L. DILLENBECK.

Subscribed and sworn to before me this 30th day of April,
329 A. D. 1910.

[NOTARIAL SEAL.]

T. E. CONRAD,

*Notary Public for the State of Montana,
Residing at Butte, Montana.*

My commission expires Sept. 10th, 1912.

STATE OF MONTANA,

County of Silver Bow, ss.:

On this 30th day of April, in the year 1910, before me, T. E. Conrad, a Notary Public within and for said county and state, personally appeared O. L. Dillenbeck, known to me to be the person whose name is subscribed to the foregoing minutes of the special meeting of the stockholders of the Parrot Silver and Copper Company, as Secretary thereof, and also to the foregoing affidavit, and acknowledged to me that he executed the said instruments.

In testimony whereof, I have hereunto subscribed my name and affixed my Notarial Seal the day and year in this certificate first above written.

[NOTARIAL SEAL.]

T. E. CONRAD,

*Notary Public for the State of Montana,
Residing at Butte, Montana.*

My commission expires Sept. 10th, 1912.

330 We, the undersigned stockholders, and proxies and representatives of stockholders of the Parrot Silver and Copper Company, present at the Special Meeting of the stockholders of said Company, held on the 30th day of April, A. D. 1910, hereinbefore recorded, do hereby certify that the foregoing minutes of the said meeting are full, true and correct; and we, and each of us, did, at such meeting, and hereby do, concur in each and all of the resolutions and proceedings in said minutes recorded.

In witness whereof, we have this 30th day of April, A. D. 1910, hereunto subscribed our names, and set opposite thereto the number of shares of stock by us respectfully owned or represented at said meeting.

H. A. Gallwey, owning.....	10 shares
H. A. Gallwey, as proxy, representing.....	167,282 shares
D. Gay Stivers, proxy, representing.....	25 shares
L. O. Evans and O. L. Dillenbeck, proxies, representing	15 shares

331 The following deed from the Parrot Silver & Copper Company to the Anaconda Copper Mining Company, dated May 31, 1910, was put in evidence by the complainants, the same being a conveyance sought to be set aside by this bill:

"This indenture, made the 31st day of May A. D. 1910, between the Parrot Silver and Copper Company, a Montana corporation, party of the first part, and the Anaconda Copper Mining Company, a Montana corporation, party of the second part, witnesseth:

Said party of the first part, for and in consideration of the issuance and payment to it of ninety thousand (90,000) shares of the full paid capital stock of the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, conveyed, assigned, transferred and set over, and by these presents does hereby grant, bargain, sell, convey, assign, transfer and set over, unto the said party of the second part, and its successors and assigns forever all of the following described property, real, personal and mixed, situate in Silver Bow County, Montana, to-wit:

That certain quartz lode mining claim, patented, known as the Adventure lode claim, being Survey No. 699, in Section 13, Township 3 North, Range 8 West of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the Agnostic lode claim, being Survey No. 3423, in Section 9, Township 3 North, Range 8 West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the Autocrat lode claim, being Survey No. 991, in Section 12, Township 3 North, Range 8 West, of the Principal Meridian for Montana.

332 Also that certain quartz lode mining claim, patented, known as the Bellona lode claim, being Survey No. 686, in Section 13 and 18, Township 3 North, Ranges 7 and 8 West, of the Principal Meridian for Montana.

Also the West 750 feet of that certain quartz lode mining claim, known as the Banker lode claim, being Survey No. 496, in Section 12, Township 3 North, Range 8 West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the Champion lode claim, being Survey No. 1598, in Section 9, Township 3 North, Range 8 West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the Copper Reef lode claim, being Survey No. 3384, in Section 21, Township 3 North, Range 7 West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the Dart lode claim, being Survey No. 5824, in Section 12, Township 3 North, Range 8 West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the Empire State lode claim, being Survey No. 3422, in Sections 9 and 10, Township 3 North Range 8 West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the Gray Eagle No. 3 East lode claim, being Survey No. 2595, in Section No. 13, Township 3 North, Range 8 West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the Kanuck lode claim, being Survey No. 966, in Section 13, Township 3 North, Range 8 West, of the Principal Meridian for
333 Montana.

Also that certain quartz lode mining claim, patented, known as the Little Mina lode claim, being Survey No. 792, in Section 12, Township 3 North, Range 8 West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the Last Hope lode claim, being Survey No. 2833, in Section 21, Township 3 North, Range 7 West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the Moscow lode claim, being Survey No. 660, in Section 12, Township 3 North, Range 8 West, of the Principal Meridian for Montana.

Also an undivided three-fourths ($\frac{3}{4}$) interest in and to that certain quartz lode mining claim, patented, known as the Moscow lode claim, being Survey No. 1689, in Section 12, Township 3 North, Range 8 West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the Midnight lode claim, being Survey No. 3385, in Section 13, Township 3 North, Range 8 West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the Mogul lode claim, being Survey No. 5823, in Section 12, Township 3 North, Range 8 West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the original No. 6 lode claim, being Survey No. 814, in Section 13, Township 3 North, Range 8 West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the Original Lot 86 A-B lode claim, being Survey No. 608,
334 in Section 13, Township 3 North, Range 8 West, of the Principal Meridian for Montana.

Also the East 100 feet of that certain quartz lode mining claim, patented, known as the Original Lode, Lot 39, being Survey No. 110, in Section 13, Township 3 North, Range 8 West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the Oro Butte lode claim, being Survey No. 592, in Section 12, Township 3 North, Range 8 West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the Parrot lode claim, Lot 134, being Survey No. 753, in Section 13, Township 3 North, Range 8 West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the Parrot lode claim, Lot 45-A, being Survey No. 261, in Section 13, Township 3 North, Range 8 West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the Plutonian lode claim, being Survey No. 990, in Section 12,

Township 3 North, Range 8 West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the P and P U lode claim, being Survey No. 4375, in Section 12, Township 3 North, Range 8 West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the Omaha Fraction lode claim, being Survey No. 4371, in Section 12, Township 3 North, Range 8 West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the Rialto lode claim, being Survey No. 906, in Section 13, Township 3 North, Range 8 West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the Strip lode claim, being Survey No. 4788, in Section 13, Township 3 North, Range 8 West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the Virginius lode claim, being Survey No. 581, in Section 13, Township 3 North, Range 8 West, of the Principal Meridian for Montana.

Also that certain portion of the Poulin quartz lode mining claim, Survey No. 786, Lot No. 146, Township 3 North, Range 8 West, described as follows, to-wit: Beginning at corner No. 1 of said Poulin claim, from which the $\frac{1}{4}$ section corner to sections 11 and 12, Township 3 North, Range 8 West, bears south $11^{\circ} 43'$ east, 1011 feet distant, and running thence south $76^{\circ} 30'$ east, 162 feet; thence north 5° east 98 feet; thence North $82^{\circ} 48'$ west 191.5 feet; thence South $15^{\circ} 15'$ east 87 feet to the place of beginning.

Also that portion of the Buffalo lode mining claim, Lot No. 70, Survey No. 579, in Section 12, Township 3 North, Range 8 West, described as follows, to-wit:

Beginning at corner No. 4 of Lot No. 150, the Little Mina lode mining claim, situated on the south boundary of the Buffalo lode mining claim, designated as Lot No. 70, in Township 3 North, of Range 8 West, and running thence North $87^{\circ} 30'$ west 531 feet to corner No. 5 of said lot No. 150, situated on the south boundary line of said Lot No. 70; thence North $19^{\circ} 15'$ east 100 feet; thence south $76^{\circ} 53'$ east, 511 feet, to the place of beginning, embracing an area of 0.58 of an acre, more or less.

Also that portion of the Oden lode mining claim, Survey No. 1326, in Sections 13 and 18, Township 3 North, Ranges 7, and 8 West, described as follows, to-wit:

Beginning at the point of intersection of the North boundary of Lot No. 135, and the east boundary of lot 53, in Township 3 North, Range 8 West, from which corner No. 1 of said lot No. 135 bears south 87° east, 567 feet distant; and from said corner No. 1, the corner to sections 7, 18, 12 and 13, Township 3 North, Range 8 West, bears North $52^{\circ} 27'$ West, 316 feet distant; running thence South $3^{\circ} 30'$ west, 40 feet; thence North 87° west, 100 feet; thence North $3^{\circ} 30'$ east, 40 feet to the place of beginning.

Also that portion of the Oden lode mining claim, Survey No. 1326,

in Sections 13 and 18, Township 3 North, Ranges 7 and 8 west, described as follows, to-wit:

Beginning at a point on the northern boundary of the Kanuck lode claim, Lot No. 219, Township 3 North, Range 8 West, which is the northern extremity of the compromised line between said Kanuck claim and the Oden claim, as settled in the decree in the case of A. H. Hedley, et al., owners of said Kanuck against Thomas Ford, et al., owners of said Oden claim, in case No. 48, Records of the second Judicial District Court in and for Silver Bow County, Montana Territory, from which point the Northeast corner No. 1 of said Kanuck lode, Lot No. 219, bears South 82° and $7'$ east, 124 feet distant; and running thence south 147 feet to a point on the south boundary of said Oden lode, lot 135; thence north 88° $15'$ east 90 feet; thence North 132 feet, (more or less) to a point on the northern boundary of said lot 219; thence north 82° $7'$ West, 90 feet, (more or less) to the place of beginning.

Also that certain placer claim, patented, known as Mineral Application No. 802, Mineral Entry 667, situated in Sections 17 and 18, Township 3 North, Range 7 West, of the Principal Meridian for Montana.

Also all of the following described part and portion of that certain placer claim, patented, known as Mineral Application number 956, Mineral Entry Number 1231, said portion being known as the Ornstein Tract, and being particularly described as follows, to-wit:

All of that certain tract or parcel of land, situated on the south side of Silver Bow creek, opposite and adjoining on the south side of the land of the Parrot Silver and Copper Company in Silver Bow County, State of Montana, and described by courses and distances as follows, to-wit:

Beginning at a point on the north boundary of Section 19, in Township 3 North, Range 7 West, of the Principal Base and Meridian of Montana, from which the northeast corner of said Section 19, bears north 89° $35'$ east, 642 feet distant; and running thence South 1° $30'$ East, 449 feet; thence South 53° $15'$ West 525 feet; thence South 52° $45'$ West 1294 feet; thence North 69° $30'$ West, 600 feet; thence North 1° East 706 feet; thence North 52° $30'$ East 857 feet; thence North 21° $45'$ West 105 feet to a point on the North boundary of said Section 19; thence North 89° $35'$ East 1347 feet to the place of beginning, comprising and containing an area of forty-five and 52-100 acres of land.

Also that certain placer claim, patented, known as the Pearl Limestone placer, being Survey No. 3816, in Section 32, Township 1 South, Range 9 West, of the Principal Meridian for Montana.

Also lots Numbers 14 and 15 of the Moonlight Addition to the City of Butte, according to the official plat and survey of said Addition, on file in the office of the County Clerk and Recorder of Silver Bow County, Montana.

Also South $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 18, Township 3 North, Range 7 West, of the Principal Meridian for Montana, excepting the following portions thereof, heretofore conveyed to the Western Iron Works, which said excepted portion is described as follows, to-wit:

The surface to the depth of fifty (50) feet of a tract beginning at the southwest corner of the same, a stake from which the quarter section corner on the south boundary of Section 18, Township 3 North, Range 7 West, bears South $0^{\circ} 07'$ west, 115 feet; and running thence North $57^{\circ} 10'$ east, along the Montana Union Railroad right of way 229.5 feet to the center of the Montana Central Railroad Spur; thence North $25^{\circ} 54'$ east, 100 feet; thence North $15^{\circ} 26'$ east, 100 feet; thence North $0^{\circ} 58'$ east, 100 feet; thence North $12^{\circ} 12'$ west 100 feet; thence North $21^{\circ} 10'$ west, 28.6 feet to a point on the south side of the Country Road; thence South $67^{\circ} 24'$ West 252 feet along the south side line of said Country Road, to a point on the east boundary of Farrel's Addition; thence South $0^{\circ} 07'$ West, 438.8 feet along the east boundary of said Farrel's addition, to the place of begining, containing area of 2.33 acres.

Also the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$; the Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$, and the Northwest $\frac{3}{4}$ of the Southeast $\frac{1}{4}$, of Section 24, Township 3 North, Range 8 West, Principal Meridian for Montana, being a tract of land, known as the Burchett placer.

Also that certain water right for one hundred (100) inches of the waters of Cottonwood Gulch Creek, located June 3, 1887, by J. M. Tripp and James E. Jacobs, and which said Notice of Location is of record at page 380, Book "A" of Mill Sites and Water Rights, Records of Silver Bow County, Montana.

Also that certain water ditch known as and called the Noyes & Upton Ditch, and which conveys the water from the gulch, or canyon situated next south of Cottonwood Gulch, and also from Cottonwood and the gulches lying north thereof up to and including Park Canyon to the Placer Mines in the vicinity of Butte, the head of said ditch being about three miles southeasterly from Butte City.

Together with all the water usually had and used in the said ditch, including the waters of the first named canyon and the other canyons lying north thereof, up to and including the said Park Canyon.

Save and except, however, and there is hereby excepted and reserved from the grant herein made all the waters running in Park Canyon and reserving what is known as the Butte & Boston Reservoir in the said Park Canyon, and it is understood and agreed that all over-flow from the said reservoir is not conveyed by this deed, but all water arising below said reservoir and the right thereto is intended to be conveyed hereby.

Also all that certain water right in and to the waters of Ducharme Gulch or Creek, which said water was located, appropriated and diverted by Elijah S. Baxter, on the 6th day of April, 1888, by a ditch 6 inches in depth by 12 inches in width and a description of the point of diversion is as follows, to-wit:

Near the mouth of the Canyon on said Ducharme Gulch or Creek and about one-half mile, more or less easterly from the Porter Ranch. Said water having also before its said location been held and used by the said first party in connection with what is properly known and called the Porter Ranch, a notice of which location, appropriation and diversion is recorded in the office of the Clerk and Recorder of Silver Bow County, State of

Montana, on page 441, of Book "A" of Placers, Mill Sites and Water Rights, to which said record reference is hereby made for a more particular description of said property.

Said party of the first part does also sell, assign, convey, transfer and set over to the said second party all of the mines, mining grounds, mining rights, claims and locations, quartz mills, concentrators, smelters, reduction works, refining works, and all other works, machinery, tools, and implements whatsoever, to the first party belonging, and wherever situate lying or being, and for whatever purpose used, owned or possessed.

Also, all water and water rights, reservoirs and reservoir rights, pipes, flumes, ditches, aqueducts and other water works, and rights of way therefor, timber, timber rights, lands, easements, and other real estate, improved and unimproved, to the first party belonging, and wherever situate, lying or being; together with all and singular all rights and privileges possessed or enjoyed in connection therewith.

Also, all right, title and interest whatsoever, legal or equitable, of the first party, of, in or to any and all mines, mining rights, lands, easements or other real estate whatsoever, and wherever situate, lying or being.

Also, all works, plants, mills, tramways, machinery, furniture supplies, equipment, stock on hand, business, good will, and other property whatsoever, and wherever situate, lying or being.

Also, all stock and shares of stock of or in other incorporated companies, to the said first party belonging, or in or to which it
341 is in anyway entitled, whether issued or not issued, and whether standing in or to be issued to or in the name of the first party, or of any person or persons, whomsoever, in trust for it, or for its use or benefit, either express or implied.

Also, all bills receivable, accounts, moneys on hand due or to become due, by reason of any past sales or transactions; also, all ores, minerals and metals, which have been or which are mined, in transit or in course of treatment and reduction; all matte-, bullion, copper, gold, silver and other metals on hand, in transit or in course of refining, and all precipitates and argentiferous mud already to be melted or parted.

Also, any and all other properties, real, personal and mixed, corporeal and incorporeal, legal and equitable, choses in action and possession, of every kind, character and description, wherever the same may be situated, belonging to the said first party, or in which the said first party is in any wise interested, or entitled to become interested.

And not in limitation of the foregoing, but in extension thereof, there is hereby sold and transferred all, each and every property and property right, of every kind, character and description, which the said first party is now or may hereafter become entitled to by virtue of any past transaction; also, all contracts of every kind and description.

Said first party does also give and grant to said second party the right to inspect, examine and at all reasonable times to take copies

of all books of account, minutes, records, letters, copies of
342 letters, files and all other private books, documents and papers
whatsoever of the said first party; together with all and
singular the tenements, hereditaments and appurtenances there-
unto belonging or in any wise appertaining, and the reversion and
reversions, remainder and remainders, income, rents, issues and
profits thereof.

To have and to hold all of the foregoing described property, rights,
privileges, and appurtenances unto the said party of the second part,
and to its successors and assigns forever.

The foregoing sale and transfer is made subject to the following
conditions:

(a) The said second party agrees to take over, and does hereby take
over, the said business and property of the said first party as a going
concern; said sale and transfer to be made as of, and take effect
from, the last hour of the 31st day of March, A. D. 1910; and to
carry out and fully perform and discharge all contracts, obligations
and liabilities, of every kind, character and description, whether in
contract or in tort, and whether now or hereafter enforceable against
the first party, and to undertake to and fully carry out and com-
pletely perform, all valid executory provisions of any contract or
contracts which may exist at the date of the transfer and delivery
of all of the property and assets of the said first party to the said
second party.

(b) Also, subject to all existing leases, releases, rights of way and
other easements, heretofore granted, made or given by the said first
party, or its predecessors in interest, and also to all vested rights ob-
tained by others against the said first party, or its predecessors in in-
terest, by legal proceedings or by adverse possession or user.

In witness whereof, the party of the first part has caused its cor-
porate name to be hereunto signed by its President, and its
343 corporate seal to be hereunto affixed, and attested by its Secre-
tary; and the second party has caused its corporate name to
be hereunto signed by its President, and its corporate seal to be here-
unto affixed and attached by its Secretary, the day and year in this
instrument first above written.

PARROT SILVER & COPPER COMPANY,
By F. P. ADDICKS, *Its President*.

Attest;

[CORPORATE SEAL.]

A. H. MELIN,
Its Secretary.

ANACONDA COPPER MINING CO.,
By B. B. THAYER, *Its President*.

Attest:

[CORPORATE SEAL.]

C. F. KELLEY,
Its Secretary.

STATE OF NEW YORK,
County of New York, ss:

On this 31st day of May, in the year 1910, before me, M. E. Bryans, a Notary Public in and for said County and State, personally appeared F. P. Addicks, known to me to be the President of the Parrot Silver and Copper Company, the corporation that executed the within instrument, and acknowledged to me that said corporation executed the same.

In Testimony Whereof, I have hereunto set my hand and affixed my Notarial Seal, the day and year in this certificate first above written.

[NOTARIAL SEAL.]

M. E. BRYAN,
Notary Public for the State of New York,
Residing at New York City.

My commission expires: March 30, 1911.

344 STATE OF NEW YORK,
County of New York, ss:

On this 31st day of May, in the year 1910, before me, M. E. Bryans, a Notary Public in and for said County and State, personally appeared B. B. Thayer, known to me to be the President of the Anaconda Copper Mining Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

In Testimony Whereof, I have hereunto set my hand and affixed my Notarial Seal, the day and year in this certificate first above written.

[NOTARIAL SEAL.]

M. E. BRYANS,
Notary Public for the State of New York,
Residing in New York City.

My commission expires March 30, 1911.

Endorsed.

STATE OF MONTANA,
County of Silver Bow, ss:

I hereby certify that the within instrument was filed for record in my office on the 5th day of July, A. D. 1910 at 5 min. past 11 o'clock A. M., and recorded on page 135 of Book 98 of Deed Records of Silver Bow County, Montana.

Attest my hand.

[COUNTY SEAL.]

M. KEER BEADLE,
County Recorder
By ED FITZPATRICK, Deputy.

345 The Complainants put in evidence Section 1012 of the Codes and Statutes of Montana in force July 1, 1895, under title "Mining Corporations," as follows:

"The Board of Directors of any mining corporation organized

under the provisions of this code, shall not have power to sell, lease, mortgage or otherwise dispose of the whole or any part of the mining ground, quartz mills, smelters, concentrators or reduction works of such corporation, unless they shall have first called a meeting of the stockholders of such corporation in the manner prescribed in Section 525 of this code, for the purpose of submitting to the stockholders of such corporation the proposition to sell, lease, mortgage or otherwise dispose of the property of such corporation or some portion thereof. The notice so required to be published and sent to each stockholder shall distinctly specify each particular tract or piece of property so to be sold, leased, mortgaged or otherwise disposed of and the particular disposition to be made thereof."

And the same provisions in the Revised Codes of Montana of 1907, Section 4405, Division I, Part IV, Title X, "Mining Corporations."

Complainants also put in evidence Section 4408 of Division I, Part IV, Title X, "Mining Corporations" of the Revised Codes of Montana 1907 and Sections 4409, 4410, 4411 and 4412. The said sections so put in evidence are as follows:

"Section 4408. Consolidation.—It shall be lawful for two or more corporations formed, or that may hereafter be formed, under the laws of this state, for mining purposes, which own or possess mining claims or lands adjoining each other, or lying in the same vicinity, to consolidate their capital stock, debts, property, 346 assets, and franchises, in such manner and upon such terms as may be agreed upon by the respective boards of directors of such corporations so desiring to consolidate their interests; but no such consolidation shall take place without the written consent of the stockholders representing two-thirds of the capital stock of each corporation, and no such consolidation shall, in any way, relieve such corporations, or the stockholders thereof, from any and all just liabilities; and in case of such consolidation, due notice of the same shall be given, by advertising for one month in at least one newspaper published in the county where the said mining property is situated, if there be one published therein, and also in one newspaper published in the county where the principal place of business of any of said corporations shall be. And when the said consolidation is completed, a certificate thereof, containing the manner and terms of said consolidation, shall be filed in the office of the county clerk of the county in which the original articles of incorporation of any of said corporations shall be filed, and a copy thereof shall be filed in the office of the secretary of state; such certificate shall be signed by a majority of each board of directors of the original corporations, and it shall be their duty to call, within thirty days after the filing of such certificates, and after at least ten days' public notice, a meeting of the stockholders of all of said mining corporations so consolidated to elect a board of directors for the consolidated mining corporation, for the year then next ensuing. The said certificate shall also contain all the requirements prescribed by this code."

347 "Sec. 44/09. Sale of Property.—Procedure.—That the board of directors or trustees of any mining corporation organized under the laws of either the Territory or State of Montana, whether before or after the passage of this Act, and whether same is solvent or insolvent, or is a going or prosperous concern or otherwise, shall have power, and upon request of stockholders of the corporation representing at least one-half the amount of the outstanding capital stock, and of record on the books of the company, it shall be their duty to call, by resolution, which resolution shall state whether the whole or only a part of the property of the corporation, and if the latter, shall designate in general terms what part is to be sold, leased, mortgaged, exchanged, or disposed of, for property or for stock of another corporation, domestic or foreign, or otherwise, a meeting of the stockholders of such corporation appearing as such upon the books of the corporation, for the purpose of considering the question of selling, leasing, mortgaging or exchanging, or disposing of for other property, or for the whole or part of the capital stock of any other corporation, whether domestic or foreign, or for otherwise disposing of the whole or any part of the mining ground, quartz mills, smelters, concentrators, reduction works and other property and assets, of every kind and description, of such mining corporation. Such meeting shall be held at the principal office or place of business of such corporation, and at least thirty days' previous notice of the time and place of such meeting shall be given to each person who appears as a stockholder upon the books of the corporation. The secretary of the corporation

348 shall make out and deposit in the United States Post Office, postage paid, a notice of such meeting, directed to each stockholder of record of the corporation by his name and to his place of residence appearing on said records, and shall make and file his affidavit of such deposit. Such notice shall be considered as given upon the deposit of the same in the Post Office, as above required and shall state the time and place of meeting, and that it is to consider, and decide upon the question of disposing of, selling, leasing, mortgaging, exchanging for property or for the whole or any part of the capital stock of any other corporation, or otherwise disposing of the whole or any part of the property of said corporation, as the case may be. If such meeting is called for the purpose of selling, leasing, mortgaging, exchanging, or otherwise disposing of the whole of the property of the corporation, the notice shall so state, but if it is for the purpose of selling, leasing, mortgaging, exchanging, or otherwise disposing of only a part of the property of the corporation, the notice shall so state and describe generally what part it is. A similar notice shall also be published, at least once a week for at least four successive weeks preceding the day of the stockholders' meeting, in some newspaper of general circulation published at or near the office or principal place of business of such a corporation, or if there be no newspaper published in said place, then the nearest place thereto where a newspaper is published, and said publication shall be proved by affidavit of the publisher or clerk of such newspaper, filed with the secretary of such corpora-

tion. Upon the day appointed for said meeting, if stockholders representing at least two-thirds of the whole number of shares of the capital stock of the corporation then outstanding and of record on the books of the company, appear in person or by agents
349 or proxies filed with the secretary, the stockholders shall organize by electing one of their number chairman and some suitable person secretary. Thereupon, any proposition for the sale or lease, or mortgage, or exchange, or disposition for other property, or for the whole or part of the capital stock of any other corporation, whether domestic or foreign, or to otherwise dispose of the whole or any part of the mining ground, quartz mills, smelters, concentrators, reduction works, or other property or assets of the corporation of every kind or description, may be considered and acted upon by said meeting, and if stockholders representing at least two-thirds of the whole number of shares of the capital stock of said corporation then outstanding, and of record on the books of the company, appearing at said meeting in person or by agents or proxies as above provided, vote in favor of any such proposition, whether proposed by the directors or trustees or not, as the stockholders may see fit, which proposition shall be in the form of a resolution specifying the particulars thereof and entered on the minutes of said stockholders' meeting, the said proposition or resolution shall be taken and adopted as the act of the corporation and shall be carried out as such and shall be approved and adopted by the board of directors or trustees. The secretary of such meeting shall enter upon the minutes of said stockholders' meeting the number of shares voted for or against the proposition or resolution, and by whom voted, and stockholders voting against said proposition or resolution shall be taken as dissenting therefrom. Upon the adoption of any proposition or resolution such as above referred
350 to, by the stockholders' meeting, the secretary of the meeting shall make out a true and complete copy of the minutes of the stockholders' meeting, which shall be signed by the chairman of such meeting and attested by said secretary and verified by them and acknowledged as required in the case of the conveyance of real estate, and shall file the same for record in the office of the county clerk and recorder of the county wherein the principal office or place of business of such corporation is situated, and also in the office of the county clerks and recorders of any other counties wherein any of the real property included in the proposition or resolution adopted by said stockholders' meeting is situated, and said record shall impart notice and have the same effect as other instruments required by law to be recorded, and such copies so filed and recorded, or the record thereof, or the certified copy of such record, shall be prima facie evidence of the matters and facts therein stated, and thereupon, and upon the adoption and approval by the board of directors or trustees of the corporation of such proposition or resolution, the corporation and its officers shall have full power and authority to do all acts and to execute all conveyances or other instruments in writing which are necessary or proper to carry out the said proposition or resolution, and the sale, lease, mortgage, ex-

change, or other disposition, or conveyance of the whole or any part of the property of said corporation authorized by said proposition or resolution, shall thereupon take effect and have the same force as if all the stockholders of the corporation had consented thereto.

351 Provided, That nothing contained in this Act shall be deemed to limit or restrict the powers of the board of directors or trustees of mining corporations, or of corporations other than mining, in relation to the disposition of property or the conduct of business; and Provided, Further, that this Act shall not be so construed as to effect any cases now pending in the Courts of this State of the United States."

"Sec. 4410. Dissolution upon Sale.—If a disposition shall be made by sale, exchange or otherwise as above provided of the whole of the property of such corporation, the corporation shall thereby be dissolved, and its affairs shall be wound up, as provided for in other cases of the dissolution of corporations."

"Sec. 4411. Rights of Dissenting Stockholders—Appraisement.—Any stockholder who shall not, at said stockholders' meeting, have voted for or authorized the proposition or resolution for the disposition of property which may have been adopted at such stockholders' meeting, may, within twenty days after the date of said stockholders' meeting, give written notice to the said corporation that he does not assent thereto, and also a like notice to the grantee or vendee, or any agent or representative of such grantee or vendee, provided that such grantee or vendee, or agent or representative of such grantee or vendee be within the state, and demands payment of the value of his stock, and within ten days after service of said notices he must, or the said corporation, or its grantee, or vendee, may, make application in the district court of the county where the principal place of business of the corporation is situated to have the value of his stock fixed and appraised, of which application at

352 least ten days' previous notice must be given by the person so applying to the other parties. The notices hereinbefore provided for may be served in the manner provided by law for the services of summons in cases in the district court. Upon said application, the said district court shall appoint three competent and disinterested persons as appraisers, and designate the time and place of their first meeting to appraise the value of the stock of such dissenting stockholders, and give them such directions as the said court may think proper. The court may fill any vacancies in the board of appraisers occurring by refusal or neglect to serve, or otherwise. Said appraisers shall meet at the time and place designated by the court, and they or any two of them shall take an oath to honestly and faithfully discharge their duties, and shall hear and take evidence in relation to the value of the stock of such dissenting stockholder at the time of his dissent and find the value thereof, and return and file their report and appraisement with the clerk of said court. The charges and expenses of such appraisement shall be paid by the corporation or its grantee or vendee."

"Sec. 4412. Appeal from Appraisement.—Either party to the appraisement and award of such appraisers may, within thirty days

from the filing of the same and service of notice thereof, appeal from such award to the district court of the county in which the same is made and filed, and thereupon the value of such stock shall be reassessed by a jury in the same manner as appeals are taken and trial had on appeals from the assessment of commissioners in condemnation proceedings provided by law. When such appraisal-

ment or award shall become final, the court shall enter
353 judgment in favor of such dissenting stockholder and against the corporation and its grantee or vendee for the amount of said award, with expenses and costs of proceedings, and execution may be issued on said judgment as in other cases. The judgment may also provide for the sale of the property affected by the lien hereinafter provided for. The claim of such dissenting stockholder for compensation and costs, as aforesaid, and the appraisalment and award and judgment thereon shall be and remain a lien upon all the real property of the corporation so conveyed or disposed of in pursuance of the stockholders' resolution, and shall be prior and superior to the rights of the grantee or vendee to all of such property; but the claims of all dissenting stockholders for compensation and their several appraisements, awards and judgments, shall be equal liens upon said property, without precedence or priority between themselves. When the amount of such appraisalment and costs shall have been paid to or collected by such dissenting stockholder or deposited with the clerk of said court for him, he shall cease to have any interest in said stock or in the corporate property of such corporation which may have been sold or disposed of in pursuance of the resolution of the stockholders' meeting as herein provided, and the stock of such dissenting stockholder shall thereupon become the property of the party satisfying the said judgment or appraisalment unless otherwise provided for by contract between such corporation and its grantee."

354 Complainants further offered in evidence the charter of the Parrot Silver & Copper Company filed in the office of the Secretary of the Montana territory August 16, 1880, which is as follows:

"We, the undersigned, Franklin Farrel, S. T. Hauser and Achille F. Migeon do hereby certify that we desire to form a company under and pursuant to the provisions of Chapter XVIII of the act of the Seventh Regular Session of the Legislative Assembly of Montana Territory and of the several acts supplementary thereto and amendatory thereof—

"We do also certify that—

"First. The corporate name of the said company is to be the 'Parrot Silver and Copper Company.'

"Second. The object for which the said company is formed is to conduct and prosecute the business of mining, reducing smelting, concentrating refining and otherwise preparing for market gold, silver, lead, copper, iron, and all other ores transporting, selling and disposing of its products; acquiring by purchase or otherwise such mine or mines or real or personal property as may be necessary or convenient for carrying on the business aforesaid

and as collateral thereto merchandising, building and maintaining necessary and convenient roads, making and erecting such structures, machinery and improvements as shall be deemed desirable or necessary and the doing of all and every act matter and thing which may be requisite or advantageous to the successful prosecution of the said business.

355 Third. The amount of the capital stock of the said company is to be One Million Dollars.

Fourth. The term of the existence of the said company is to be twenty years.

Fifth. The capital stock of the said company is to consist of One Hundred Thousand Shares of the par value of Ten Dollars each.

Sixth. The number of trustees who shall manage the concerns of the said company shall be seven and the names of each Trustee for the first three months are Franklin Farrel, Thomas Wallace, S. T. Hauser, George B. Turrell, Achille F. Migeon, A. M. Holter and Thomas Wallace, Jr.

Seventh. The operations of the said Company shall be carried on at and in the vicinity of Butte City in the County of Deer Lodge in the Territory of Montana.

Eighth. The said company is formed for the purpose of carrying on some part of its business outside the Territory of Montana, to-wit: in the City, County and State of New York, in which city and county, meetings of its Board of Trustees may be held and such other business of the said Company be transacted as shall be lawful including the sale of its products, and the locality and county in the Territory of Montana in which the principal part of the business of said company within the said Territory is to be transacted shall be at and in the vicinity of Butte City in the County of Deer Lodge.

In witness whereof, we have hereunto set our hands and seals at the city of New York this 21st day of May, 1880.

356 FRANKLIN FARREL.
SAMUEL T. HAUSER.
ACHILLE F. MIGEON.

In presence of—

W. S. HOLBROOK,
Notary Public.

STATE OF NEW YORK,
City & County of New York, ss:

On this 21st day of May, 1880, before me personally appeared Franklin Farrel, S. T. Hauser and Achille F. Migeon to me known to be the individuals described in and who executed the foregoing certificate and they severally before me signed the said certificate and acknowledged that they signed the same for the purposes therein mentioned.

[SEAL.]

W. S. HOLBROOK,
Notary Public, Kings and N. Y. Co.

STATE OF NEW YORK,
City & County of New York, ss:

I, William A. Butler, Clerk of the city and county of New York, and also clerk of the Supreme Court for the said city and county, the same being a court of record, do hereby certify that W. S. Holbrook has filed in the clerk's office of the county of New York, a certified copy of his appointment as Notary Public for the County of Kings with his autograph signature, and was at the time of taking the proof or acknowledgment of the annexed instrument, duly authorized to take the same. And further that I am well acquainted with the handwriting of such Notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine. I further certify that said instrument is executed and acknowledged according to the law of the State of New York.

357 In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County the 21- day of May, 1880.

WM. A. BUTLER, *Clerk*. [SEAL.]

TERRITORY OF MONTANA,
County of Deer Lodge, ss:

I, James E. Dickey, County Clerk and ex-Officio Recorder in and for said Deer Lodge County, do hereby certify that the above and foregoing is a full, true and correct copy of Certificate of Incorporation of the Parrot Silver and Copper Company save and except W. S. Holbrook, Notary Public as witness and omission — the letter F in Migeon's name on first page and second line, as the same appears on file in my office of date August 16, A. D. 1880, at 4.30 o'clock P. M.

Attest my hand and seal of said Deer Lodge County on the 16th day of August, A. D. 1880.

JAMES E. DICKEY,
County Clerk and Recorder. [SEAL.]

Filed in the office of the Secretary of Montana Territory August 16, 1880.

JAMES H. MILLS, *Secretary*.

Duplicate original.

Recorded in Book "B" of Incorporations, pages 69 & C.

UNITED STATES OF AMERICA,
Territory of Montana, ss:

I, Wm. B. Webb, Secretary of the Territory of Montana, do hereby certify that I have compared the annexed and foregoing Certificate of Incorporation of the "Parrot Silver and Copper Company" with the duplicate original thereof, filed in my office on the Sixteenth day of August, A. D. 1880, and that the same is correct transcript therefrom, and of the whole of said duplicate original Certificate of Incorporation.

Witness my hand and the Seal of the Territory of Montana, this nineteenth day of April, A. D. One Thousand Eight Hundred and Eighty Seven.

[Seal of the Territory of Montana.]

WM. B. WEBB,
Secretary of the Territory on Montana.

359 The Complainants also put in evidence the certificate of extension of the charter of the Parrot Silver and Copper Company filed August 25, 1897, which is as follows:

"Certificate Parrot Silver and Copper Company.

We, undersigned, Andrew J. Davis, Chairman, and Robert D. Grant, Secretary of a Special Meeting of Parrot Silver and Copper Company, a corporation organized and existing under the laws of Montana, and having its principal place of business in Butte, Silver Bow County, Montana, held at the office of said Company in said Butte, August 24th, 1897, at 11 o'clock A. M., for the purpose of extending the corporate purposes and business of said company and for the purpose of extending the term of the corporate existence of said company, hereby certify and declare as follows:

That for the purpose of so extending the corporate purpose and business of said company and the term of its corporate existence the trustees of said company published the notice of said special meeting, in the proceedings of said meeting hereinafter set forth verbatim, in the Inter Mountain, newspaper published at Butte, Silver Bow County, Montana, for six weeks successively prior to said date of said meeting and deposited a copy of said notice addressed to each stockholder of said company at his usual place of residence, in the post office at Butte, Montana, more than six weeks prior to the date of said meeting; that said notice was signed by a majority of the board of trustees of said company, to-wit, by Franklin Farrell, A. F. Migeon, Robert D. Grant, Thomas Wallace, Jr., and John H. Matthews, directors of said company and in pursuance of said notice said meeting was held at said time and place and Andrew J. Davis was chosen chairman of the same and Robert D.

Grant Secretary, and the following is a true and correct
360 statement of all acts, proceedings and votes had and taken at said meeting, viz:

Minutes of the Special Meeting of the stockholders of Parrot Silver and Copper Company, held at the office of the company in Butte, Montana, on August 24, 1897, at 11:00 o'clock A. M., of said day:

And on said 24th day of August, 1897, at 11:00 o'clock A. M. of said day, being the day and hour at which said meeting was called, a special meeting of the stockholders of Parrot Silver and Copper Company was held at the office of said Company in Butte, Montana. The following named stockholders of record of the number of shares set opposite their respective names, were present, in person.

Names.	Number of Shares.
Andrew J. Davis	51
Robert D. Grant	122
Total	<u>173</u>

and the following stockholders were represented at said meeting by proxy to the number of shares set opposite their respective names:

Names.	Proxy.	No. Shares.
Geo. B. Turrell,	Robt. D. Grant	23,538
William H. Turrell,	do.	528
Mrs. Elizabeth F. Migeon,	do.	2,544
A. F. Migeon,	do.	25,182
Thomas Wallace, Jr.,	do.	509
Norman B. Holter,	do.	250
Edwin O. Holter,	do.	254
A. M. Holter,	do.	513
Rutherford Trowbridge,	do.	661
Mrs. May W. Trowbridge,	do.	16,640
John H. Matthews,	do.	1,985
Amount carried for'd		<u>72,604</u>

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Names.	Proxy.	No. Shares.
Amount brought forward		72,604
Chas. H. Pine,	Robt. D. Grant	3,600
Rufus E. Holmes,	do.	3,167
Alton Farrel, by Julia E. Brooker, guardian,	do.	528
Miss Lillian C. Farrel, by Julia E. Brooker, guardian,	do.	528
Mrs. Julia E. Brooker,	do.	2,564
Charles F. Brooker,	do.	1,000
Charles F. Bliss,	do.	2,035
Mrs. E. Westwood Wallace,	do.	2,417
Mrs. Ellen B. Wallace,	do.	64
Miss Lillian E. Farrel, by Mrs. Lillian C. Farrel, guardian,	do.	238
Franklin Farrel, Jr., by Mrs. Lillian C. Farrel, guardian,	do.	509
Miss Elsie Farrel, by Mrs. Lillian C. Farrel, guardian,	do.	509
Mrs. Lillian C. Farrel,	do.	20,354
Hugh Kelly,	do.	1,018
William N. Clark, Jr.,	do.	2,018
Franklin Farrel,	do.	<u>72,680</u>

J. H. Leyson, administrator of estate of A. J. Davis, deceased,	do.	14,312
Edgar T. Weed,	do.	528
Mrs. Elise T. Underhill,	do.	528
Total		201,710

and the following named stockholders were absent and unrepresented at said meeting:

John E. Hudson	250
Estate of W. A. Hungerford	204
Mrs. Elizabeth W. Waller	63
J. Sam Brown, Receiver	633
Derby Savings Bank	2,290

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Names.	No. Shares.
Mrs. Isabel H. Bartholomew	102
Dana Bartholomew	407
E. H. Tomlinson	3,072
Lewis J. Atwood	1,055
U. T. Hungerford	1,119
John H. Castwood	204
Mrs. Helen M. Wallace	825
Mrs. Mary V. Jackson	633
Mrs. Elizabeth S. Atwood	1,055
Chas. H. Warren	51
William J. Penoyer	1,018
Mrs. Frances E. Bowen	407
Almon F. Bowen	102
Mrs. Helen M. Davis	153
Mrs. Virginia M. Swift	1,170
Peter Tomlinson	407
Messrs. W. H. Crossman & Bro.	1,018
Chas B. Platt	1,018
Dr. W. A. Hendry	102
Estate of Grace E. Gaylord	153
J. E. Gaylord	10,456
Treasury Stock	150
Total	28,117

In the absence of Franklin Farrel, President of said Company, said meeting proceeded to organize by choosing Andrew J. Davis, being a director of said Company, chairman, and Robt. D. Grant, secretary of said meeting, said meeting was held pursuant to and for the purpose specified in the following notice therefor, signed by a majority of the directors of said company:

Notice of Stock Holders Meeting.

Notice is hereby given that a meeting of the stockholders of the Parrot Silver and Copper Company will be held at the office of said company in Butte, Montana, on August 24, 1897, at 11 o'clock A. M. of said day, for the purpose of extending the term of its existence to forty years from the date of its original incorporation and to extend its corporate purposes and business as follows:

To engage in and carry on all kinds of manufacturing, mining, mechanical, agricultural, chemical, electrical, mercantile, commercial, industrial and productive business or businesses;

To construct and operate saw mills and other mills and work for cutting and treating logs and timber;

To acquire by purchase or otherwise, hold, use, cultivate, sell and convey and lease lands for agricultural and stock purposes and timber lands and interests therein;

To acquire by purchase or otherwise, hold, use, lease and convey water-rights in flowing streams, ponds and reservoirs and rights of way for conveying water for domestic, agricultural and manufacturing purposes;

To acquire by purchase or otherwise, construct, hold, own, operate, lease and convey electric light, electric heating and power plants, works, lines, systems, and equipments, telegraph and telephone plants, roads, bridges, tramways, cable and trolley lines, and rights of way and franchises therefor and to charge and collect tolls for the use and service thereof.

To acquire, hold, sell and deal in shares of stock, bonds, and securities of other incorporated companies;

To construct, maintain and lease hotels, lodging and boarding houses, theaters, halls, public parks, grounds and resorts for
364 exercise, business or amusement.

To acquire, hold, sell and deal in real estate, personal property and merchandise in Montana and elsewhere.

To lend money and take, hold and realize on securities therefor.

To borrow money, execute securities therefor and secure the same by mortgage and pledge of the real or personal estate of the corporation.

To deal in patent rights and do on commission, any of the kinds of business which the corporation is empowered to transact.

The procurement and manufacture of light, water and heat and the supply thereof to the public.

The construction and operation of canals, ditches, dams, flumes, reservoirs, pipe-lines and other works for storing, conveying and distributing the same and the acquisition of rights of way, franchises, privileges, and all other property necessary therefor.

To purchase, acquire, hold, develop, improve, use, lease, sell and otherwise dispose of water powers and rights and the sites thereof and lands necessary or useful therefor or for the industries or habitations arising or growing up or to arise or grow up in connection with or about the same, purchasing, holding, laying out, putting, leasing, selling, dealing, conveying or otherwise using or disposing

of town sites or towns or the lots, blocks or subdivisions thereof or
of lots, blocks or subdivisions of any town, village or city.

365 Dated July 1st, 1897.

FRANKLIN FARREL,
A. F. MIGEON,
ROBERT D. GRANT,
THOMAS WALLACE, JR.,
JOHN H. MATHEWS,
*A Majority of the Board of
Directors of Said Company.*

And it appearing that said notice was published six weeks succes-
sively prior to said August 24, 1897, in the Inter Mountain, a news-
paper published in Butte, Silver Bow County, Montana, and that a
copy of the same was deposited in the post office at said Butte, ad-
dressed to each stockholder of said company, at his usual place of
residence at least six weeks prior to said August 24, 1897, and on a
canvass of the number of shares of stock of said company repre-
sented at said meeting in person or by proxy, it appears that two-
thirds of the whole number of shares of said stock was represented,
to-wit; 201,883 shares; on motion of Robt. D. Grant said meeting
proceeded to ballot on the proposition of extending the term of the
existence of the said company to forty years from the date of its
original incorporation, and upon canvassing said ballot it appeared
that two-thirds of the shares of stock of said company voted to ex-
tend the term of the existence of said company to forty years from
the date of its original incorporation, to-wit:

Stockholders.	No. of shares.	Vote.
A. J. Davis (in person)	51	Yes.
Robt. D. Grant (in person)	122	Yes.
Robt. D. Grant (by proxies)	201,710	Yes.
Total	201,883	

366 being the whole number of shares represented either in per-
son or by proxy at said meeting, and no shares being voted in
the negative.

On motion of Robt. D. Grant, said meeting proceeded to ballot on
the proposition of extending the corporate purposes and business of
said company, as follows:

To engage in and carry on all kinds of manufacturing, mining,
mechanical, agricultural, chemical, electrical, mercantile, commer-
cial, industrial and productive business or businesses.

To construct and operate saw-mills and other mills and works for
cutting and treating logs and timber;

To acquire by purchase or otherwise, hold, use, cultivate, sell and
convey and lease lands for agricultural and stock purposes and
timber lands and interests therein;

To acquire by purchase or otherwise, hold, use, lease and convey
water-rights in flowing streams, ponds and reservoirs and rights of

way for conveying water for domestic, agricultural and manufacturing purposes;

To acquire by purchase or otherwise, construct, hold, own, operate, lease and convey electric light, electric heating and power plants, works, lines, systems and equipments, telegraphs and telephone plants, roads, bridges, tramways, cable and trolley lines and rights of way and franchises therefor and to charge and collect tolls for the use and service thereof.

To acquire, hold, sell and deal in shares of stock, bonds, and securities of other incorporated companies;

367 To construct, maintain and lease hotels, lodging and boarding houses, theatres, halls, public parks, grounds and resorts for exercise, business or amusement;

To acquire, hold, sell and deal in real estate, personal property and merchandise in Montana and elsewhere.

To lend money and take, hold and realize on securities therefor.

To borrow money, execute securities therefor and secure the same by mortgage and pledge of the real or personal estate of the corporation.

To deal in patent rights and do on commission any of the kinds of business which the corporation is empowered to transact;

The procurement and manufacture of light, water and heat and the supply thereof to the public.

The construction and operation of canals, ditches, dams, flumes, reservoirs, pipe lines and other works for storing, conveying and distributing the same and the acquisition of rights of way, franchises and privileges and all other property necessary therefor;

The construction, operation and maintenance of street railway lines and the acquisition of all property, franchise and privileges necessary therefor.

To purchase, acquire, hold, develop, improve, use, lease, sell and otherwise dispose of water powers and rights and the sites thereof and lands necessary or useful therefor or for the industries of habita-

368 tions arising or growing up or to arise or grow up in connection with or about the same, purchasing, holding, laying out, platting, leasing, selling, dealing in, conveying or otherwise using or disposing of town sites or towns or the lots, blocks or subdivisions thereof, or of lots, blocks or subdivisions of any town, village or city, and, upon canvassing said ballot it appeared that two-thirds of all the shares of stock of said company voted to extend the business and purposes of said company as aforesaid, to-wit:

Stockholder.	No. of shares.	Vote.
A. J. Davis, (in person).....	51	Yes.
Robt. D. Grant, (in person).....	122	Yes.
Robt. D. Grant, (by proxies).....	201,710	Yes.
Total.....	201,883	

being the whole number of shares represented in person or by proxy at said meeting and no shares being voted in the negative.

Whereupon, on motion, said meeting adjourned without date.
August 24, 1897.

Attest:

ANDREW J. DAVIS, *Chairman*,
ROBT. D. GRANT, *Secretary*.

that said acts, proceedings, and votes so had and taken as aforesaid, were recorded at length as the minutes of said meeting in the records of said Company and that all said proceedings, acts and votes as so taken and had and recorded, are a true and correct statement of all the proceedings of said meeting.

And we further certify and declare that the capital stock of said company is \$2,300,000; that the whole amount thereof is actually paid in and that the whole amounts of the debts and liabilities of said company is \$157,245.75, being the amount of debts and liabilities on June 1st, 1897, the close of the fiscal year of said company and the last date upon which it is practicable to ascertain and compute the amount of said debts and liabilities; and that the undersigned, Robert D. Grant, is secretary of said company.

Witness our hands this 24th day of August, 1897.

ANDREW J. DAVIS, *Chairman*.
ROBT. D. GRANT, *Secretary*.

STATE OF MONTANA,

County of Silver Bow, ss:

Andrew J. Davis, being duly sworn, deposes and says under oath as follows: I am the Andrew J. Davis who was chosen chairman of the Special Meeting of the stockholders of Parrot Silver and Copper Company held at the office of the company in Butte, Montana, August 24th, 1897, at 11 o'clock A. M., of said day; I have read the foregoing certificate and know the contents thereof and the matters and things therein contained and stated are true to my knowledge.

370

Stipulation.

It is agreed by the parties hereto that the said sections 4408, 4409, 4410, 4411 and 4412 of the Revised Codes of Montana of 1907 form part of a law passed by the Sixth Legislative Assembly of the State of Montana known as House Bill No. 132, which said law was adopted and has been in full force and effect since the 28th day of February 1899.

Stipulation.

It is agreed by the parties hereto that upon the argument upon the final hearing of the above cause, before the Honorable George M. Bourquin, Judge of the District Court of the United States, it was expressly stated by Robert L. Clinton, Esq., one of the attorneys for the complainants, that the complainants had abandoned and waived any question raised in said case as to any of the transactions

set forth in complainants' said bill of complaint, being in violation of the Act of Congress of July 2, 1890, known as the 'Sherman Anti Trust Act.' Further, that during the progress of said case in said District Court, the only contention asserted by counsel for complainants as to the constitutionality of any statute of the State of Montana in connection with the matters complained of in this action, was as set forth in the following portion of the brief of said appellants, submitted to the court upon the final hearing:

371 'That the only denial in the answer is of controlling intent, whether or not, they, in good faith, carried out these acts of demolition and depletion, in the best interests of the stockholders of the Parrot Company, with not a single instance in the record where their acts did inure to the benefit of the stockholders, but, on the contrary, to their very serious detriment; whether or not, as we claim, they pursued a policy in the interest of the dominant control, for the purpose, and with the intent, of 'swallowing-up' all the large copper producers of the Butte camp, on the most favorable terms to this control, wholly regardless of the rights of the minority stockholders.

We respectfully urge that, it can not be claimed otherwise, as they not only compassed, but actually carried out the conspiracy in every detail, by taking over every large producing copper property in the camp, and where they had smelters, as many of them did, they demolished all these smelters, except the Boston & Montana.

These facts can all be gleaned from the circular letter, dated April 7th, 1910. That the basis of trade was an arbitrary one, and just what they dictated, as, it can be seen that, they offered 500,000 shares for the properties of a company organized by Mr. Ryan and associates, which does not own and possess as much mineral ground, nor as well situated as the Parrot Company, to whom they only offered 90,000 shares. (See Red Metal Company's offer.)—upon the theory, perhaps, that they only owned the majority control of the Parrot.

Complainants, therefore, contend that, if they are compelled to accept this arbitrary allowance, on such unfair basis, whereby the owners of the Parrot assets, receive 9/23 of a share of stock in Anaconda for one in Parrot, or 2 5/23 shares of Parrot for one of
372 Anaconda, through the agencies and methods employed by this dominant control, that it would be very much to their detriment and damage, and for which no adequate relief can be given save in a court of equity, for the following reasons:

First. Through the fraudulent and intentional acts and general plan, conceived and carried out by the dominant control, the assets of the Parrot Company were demolished, disintegrated, concealed and sold to themselves, and the Parrot property absorbed, and thereby, prior to the attempted statutory sale, they put the Parrot holdings in the poorest, possible light by reducing the pioneer, prosperous, going and complete mining and smelting company, to a mere bankrupt dependency, and then ask, that the Parrot stockholders, accept the 90,000 shares of Anaconda, or pursue the statutory remedy for an appraisal, which, under these circumstances, the last mentioned method, would afford the stockholders no adequate compensation.

Again,—The allowance of Anaconda stock was made as an inducement of its acceptance. The Parrot properties were put in their poorest light to the stockholders; valuable assets, consisting of disputed ore deposits, had been transferred to other subsidiaries of the dominant control without any valuable consideration. (Nipper vein.) Valuable mineral ledges were not taken into consideration or reported. Valuable ore deposits, which were *prima facie* the property of the Parrot Company, were conceded the property of the control. (Steward Fault vein, under Parrot surface.) Mining operations of the Parrot conducted through shafts of other companies, at increased expense to the Parrot Company. Parrot ground, which remained undeveloped where the ground immediately abutting it contained valuable ore deposits. Thus, taking away from the

373 Parrot, the profits of smelting its own ore, custom ores, profits refining and demolishing about \$2,000,000 worth of assets, out of which they scarcely realized \$300,000, thereby reducing the Parrot Company from a prosperous, independent, operating company, to practically a dormant, bankrupt, dependent company.

We contend that, under all these circumstances and conditions, that the Statute of Montana could not be invoked to perpetrate or cover up a fraud, and that a sale could not be so conducted, that even the law could be made an instrument of fraud.

We also say that, if these complainants were compelled to accept their proportion of the Anaconda stock or submit to the appraisal provided for in the Statute, under this state of facts, that it would be the taking of their property without due process of law, and without just compensation, which would be in violation of the Fifth amendment of the Constitution that,

"No person shall be deprived of life, liberty or property, without due process of law, nor shall private property be taken for public use without just compensation."

We will not attempt to cite cases as to what "just compensation" is, or what "due process of law" is, as each case must furnish its own state of facts, so that the court will be able to say that, if in this specific instance, the party had been deprived of his property, without due process of law, and without just compensation therefor.

Mr. Webster gives a definition in the Dartmouth College case, 4 Wheaton, 518, which is, perhaps, the one most quoted:

"By the law of the land is most clearly intended the general law which hears before it condemns, which proceeds upon inquiry, and renders judgment after trial."

374 Mr. Cooley's definition has a meaning that, every citizen shall hold his life, liberty, property and immunities under the general rules which govern society. Cooley's Constitutional Limitations, 353.

It would seem that, there would be deducible from these decisions, the following statement:

"The principles of justice are as unchangeable as the law of the Medes and Persians, but the method or manner of administering

may be changed. It must not, however, be changed so as to deprive a man of his property without just compensation."

It would then follow that an appraisal, after the destruction of practically all the assets, save the undestructable earth and the placing of a valuation thereon, after the Parrot Company had been stripped of everything which made it an independant, profitable, going concern, could not be the fixing of a value, especially in view of the fact that, this stripping or depleting was fraudulent, intentional and the carrying out of a plan for ultimately "swallowing-up" the minority stockholders for any arbitrary consideration that the dominant control might decide to offer them."

375 Complainants' Exhibit "G" introduced at the hearing of said cause is in the words and figures following, to-wit:

376

COMPLAINANTS' EXHIBIT G.

Notice of Special Meeting of Stockholders of Parrot Silver and Copper Company.

BUTTE, MONTANA, March 28, 1910.

To the stockholders of the Parrot Silver & Copper Company:

In accordance with a resolution adopted by the Board of Directors of the Parrot Silver & Copper Company on the 14th day of February, A. D. 1910, Notice is hereby given that a Special Meeting of the Stockholders of the above named Company will be held at the principal office of the Company, in the Hennessy Building, in the City of Butte, County of Silver Bow, State of Montana, on Saturday, the 30th day of April, A. D. 1910, at the hour of 11 o'clock A. M., for the purpose of considering a proposition to sell and dispose of the whole of the property and assets of every kind, character and description, real, personal and mixed, corporeal and incorporeal, in law and in equity, owned by the above named Company or belonging thereto, to the Anaconda Copper Mining Company, a Montana corporation, for a part of the capital stock of the said Anaconda Copper Mining Company, and for the transaction of any other business which may lawfully be considered at such meeting.

Notice is also hereby given that for the purpose of the above meeting, the Transfer Books of the Company will be closed at 3 o'clock P. M. on the 30th day of March, 1910, and re-opened at 10 o'clock A. M. on the 2nd day of May, 1910.

By order of the Board of Directors of the Parrot Silver and Copper Company.

A. H. MELIN, *Secretary.*

Filed April 17, 1913. Geo. W. Sproule, Clerk.

377 Complainants' Exhibit "H" omitting the map, introduced at the hearing of said cause is in the words and figures following, to wit:

378

COMPLAINANTS' EXHIBIT H.

NEW YORK, April 7, 1910.

To the Stockholders of the Parrot Silver & Copper Company:

A special meeting of the stockholders of the Parrot Silver & Copper Company has been called to meet at the principal office of the Company, in the Hennessy Building, Butte, Montana, on the 30th day of April, A. D. 1910, at the hour of 10 o'clock A. M., for the purpose of considering and acting upon a proposition which has been made by the Anaconda Copper Mining Company to purchase and acquire all of the property and assets of every kind, character and description owned or possessed by your Company, in consideration of the issuance to your Company of 90,000 shares of the capital stock of the said Anaconda Copper Mining Company.

In submitting this proposition to the shareholders of the Company and asking for their proxies to vote the stock owned by them at the said meeting, the management of the Company desires to call your attention to the following facts:

First. The property of the Company is practically all located in Silver Bow County, Montana, within or near the City of Butte. For purposes of convenience, the property may be subdivided into five different groups. Three of these groups consist of mining claims, mining ground and mines, while the other two are principally valuable for surface purposes, and need not be considered in this connection.

Of the five groups of mining property, but one is being actively operated, to-wit, the Parrot and Little Mina Group. The other three, to-wit, the Ora Butte, Champion, and Copper Reef-Last Hope Group, are not now, and for some years past, have not been operated.

The Parrot-Little Mina Group consists of the following claims or portions thereof, the relative positions of which may be noted upon the accompanying map:

Adventure Lode	Lot	125
Kanuck Lode	"	219
Rialto Lode	"	190
379 Virginus Lode	"	72
Midnight Lode	Survey	3385
Original No. 6 Lode.....	Lot	161
Original Lode	"	86A
Original Lode	"	86B
Grey Eagle No. 3, East Lode.....	"	571
Dart Lode	Survey	5824
Strip Lode	"	4788
Parrot Lode	Lot	134
A portion of Parrot Lode.....	"	45A
A portion of Oden Lode.....	"	70-135
A portion of Bellona Lode.....	"	60-122
A portion of Original Lode.....	"	39
Little Mina Lode Claim.....	"	150
A portion of the Buffalo Lode, adjoining on the North.	"	70

With the exception of the Little Mina and the portion of the Buffalo above referred to, all of the above mentioned claims are contiguous, and are operated principally through the Parrot shaft, which has been sunk to a vertical depth of 2,151 feet, and from which workings have been opened on what are known as the 100, 200, 300, 400, 500, 600, 700, 800, 900, 1000, 1200, 1300, 1400, 1500, 1600, 1700, 1800, 1900, and 2000 foot levels.

The Little Mina has been developed by a vertical shaft sunk on the Little Mina claim 1,153 feet in depth. Workings have been opened from this shaft on the 50, 150, 400, 600, 800, 1000, 1100 and 1200 foot levels.

For practical mining purposes, the chief value of the Company's property is in the Parrot-Little Mina Group.

Under what is known as the law of the apex, or the right which is granted by the United States Government to follow a vein on its dip extralaterally beyond the surface lines of a mining claim, the ownership of the ore bodies which constitute the principal assets of this Company is dependent upon the respective positions of the apices thereof within the different mining claims owned by the Company with reference to the surface boundaries of such mining claims.

The principal workings of the Company have reached a depth where the ore bodies available for working purposes lie beneath the surface of mining claims owned by the Washoe Copper Company, the Anaconda Copper Mining Company, and Red Metal Mining Company, respectively, and the segregation of the property rights of the different claimants to these ore bodies is 380 a matter of extreme difficulty.

In addition to the ordinary difficulty of determining the underground rights of various mining claims owned by different companies, complicated geological conditions disclosed by developments made during the past few years, have introduced the factors of faulting and displacement of veins which were continuous and identical at or near the surface, making it almost impossible to determine the identity of such veins, except by upraising along the fissures enclosing the same to a point at or near the surface, and by then drifting along the strike of the veins to determine the position of the apex with reference to the surface lines of the mining claim wherein it lies. Such an operation is utterly useless from an economical standpoint, and can only be conducted in such an extravagant and wasteful manner as to make it impracticable.

The only feasible solution of this difficulty, in the judgment of the management, lies in a unification of the titles to all the mining claims in the vicinity, and it is believed that such a course, if upon a fair and equitable basis, would be to the mutual advantage and benefit of all the mining companies involved.

Second. The necessary cost incident to mining operations is proportionate to the grade of the ore, the extent of the ore body and the depth at which it is found. The workings of the Parrot mine have been sunk to such depth that practically all of the valuable ore supply now lies below the 1,800 foot level. In order to reach and

extract this ore, it is necessary for the Parrot Company to maintain a complete equipment, consisting of surface plant and machinery, with the necessary auxiliaries of carpenter shops, blacksmith shops, machine shops, etc., and to employ a general staff to manage, direct and supervise the surface and underground workings, constituting a plant and organization capable of handling operations of much greater extent than can now be carried on by your Company.

Attached to this letter will be found the following statements, marked Exhibits A, B and C respectively, which show:

381 Surplus Account of the Company, from May 1, 1899, to December 31, 1909;

Output, Production and Sale of Metals from May 1, 1902, to December 31, 1909; and a

Trial Balance of the Company, showing its condition on December 31, 1909.

No dividends have been paid by the Company since the year 1907, and the mines of the Company have been operated at a loss since the ending of the fiscal year of June 30, 1908.

In explanation of the foregoing, the management wishes to say that prior to the year 1905, ore bodies of large extent and good grade were developed and mined in the Parrot Mine above the 1,500 foot level. These ore bodies were of unusual extent, caused by an intersection of the so-called Blue Vein and main Parrot vein. About the year 1905, these ore bodies became exhausted and the developments which were carried on beneath the 1,500 foot level exposed ore bodies of much less extent and lower values, due principally to a shortening of the length of vein caused by a series of faults which occurred in such manner as to cut off a part of the vein. This condition has maintained to the present time in the Parrot Mine.

During the year 1908, the lower developments of the Little Mina Claim exposed ore bodies of considerable magnitude, the same occurring, however, in irregular, lenticular masses. The increased production during the calendar year ending June, 1909, was due principally to these developments. During periods of operation since then the production has been upon nearly the same basis as in the year last referred to.

In explanation of the amounts shown upon Exhibit A to have been charged off, the management wishes to say that prior to the assumption of control by the present management of the Company, property consisting principally of the old smelter at Butte, the partially constructed reduction plant at Gaylord, and the refinery at Bridgeport, had been carried upon the books of the Company at cost; in order to show the actual value of this property, it was necessary to charge off the amounts shown.

In the opinion of the management, it would be extravagant
382 to continue mining and exhausting the resources of this Company under the present method if, by unifying the titles of this Company with those of the Anaconda Copper Mining Company and the Washoe Copper Company, more economical methods of mining and operating could be introduced. If the proposed transaction is carried out, it will be possible to obviate the necessity

for maintaining a separate and independent plant and equipment for the mines of this Company, as the same can be cheaply and economically operated from neighboring shafts owned by the Anaconda Copper Mining Company, and the saving thus effected, which will amount to a considerable sum, will enable the property of this Company to be operated at a profit under prevailing conditions.

The management wishes to say that in order to lessen as much as possible the expense of operations since October, 1906, no salaries or remuneration of any kind have been paid to the officers of your Company, except the salary of the general manager at Butte, who has had active charge of the operations conducted by the Company.

Third. By unifying the titles of the different companies involved, it will be possible to adopt a complete system of drainage and ventilation, enabling the mines now owned by separate companies to be worked in harmony with the system thus adopted, and it is apparent that so doing will result in a substantial saving to the different companies concerned.

Fourth. Your Company is the owner of considerable areas of mining ground which have only been partially prospected and developed. To lay out a system of prospecting and to perform the necessary development work to test the ground owned by this Company, would be a serious drain upon the resources of this Company, while it is believed that if the property of the Company is consolidated with the property of the other mining companies, hereinafter named, a general system of prospecting and development can be so laid out that the same can be economically conducted to the mutual advantage of all concerned.

Fifth. The Board of Directors of the Anaconda Copper Mining Company has offered in exchange for all the property and
383 assets of this Company, 90,000 shares of the Capital Stock of the Anaconda Copper Mining Company. It should be stated that proceedings have been taken by the shareholders and officers of the Anaconda Copper Mining Company resulting in increasing the Capital Stock of the last named Company from its original issue of 1,200,000 shares, having a par value of \$25 each, to 6,000,000 shares of the par value of \$25 each, and that the Board of Directors of the Anaconda Company has offered to the following named companies the following respective amounts of its said capital stock, to-wit:

Boston & Montana Consolidated Copper & Silver		
Mining Company	1,200,000	shares
Washoe Copper Company	380,000	"
Big Blackfoot Lumber Company	300,000	"
Trenton Mining & Development Company.....	120,000	"
Red Metal Mining Company.....	500,000	"
Butte & Boston Consolidated Mining Company...	300,000	"
Alice Gold & Silver Mining Company.....	30,000	"
Diamond Coal & Coke Company.....	100,000	"

At the date of this letter, the foregoing propositions have been accepted by the stockholders of the Boston & Montana Consolidated Copper & Silver Mining Company; Washoe Copper Company; Big Blackfoot Lumber Company; Red Metal Mining Company; Butte & Boston Consolidated Mining Company, and the Trenton Mining and Development Company, and the officers of these Companies have been authorized and directed to transfer and sell all of the property owned by the above named Companies, in consideration of the above specified amounts of Anaconda Copper Mining Company's capital stock.

Sixth. A committee which was appointed by your Board of Directors, consisting of the President and General Manager of your Company, to-wit, Mr. F. P. Addicks and Mr. H. A. Gallway, has conferred with a similar committee appointed by the Board of Directors of the Anaconda Copper Mining Company, and has also investigated the terms offered the above named companies, for the purpose of ascertaining the equity of the offer made by the Anaconda Copper Mining Company to this Company. After carefully considering the matter, the said committee has reported in favor of the proposed transaction, and has recommended and advised that the shareholders of your Company accept the said offer and authorize the sale
384 and conveyance of all the property and assets of the company upon the above named basis.

You are advised that under the laws of Montana, in order to carry out the proposed transaction, it requires the representation or presence of two-thirds of all the stock issued by the Company. You are therefore requested to sign the endorsed proxy and return it in the enclosed envelope, whether you expect to be present or not, so that your stock may be represented and participate in the proceedings contemplated.

Very truly yours,

F. P. ADDICKS,
SIDNEY CHASE,
JOHN D. RYAN,
B. B. THAYER,
A. B. GRAFIUS,
H. A. GALLWAY,
A. H. MELIN,

Directors.

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EXHIBIT A.

Parrot Silver and Copper Company.

Condensed Surplus Account.

From May 1st, 1899, to December 31st, 1909.

Balance of Surplus Account, per the books of the Company, at April 30th, 1899 (the date when the Amalgamated Copper Company acquired stock)	\$1,718,241.40
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Deduct:

Amount written off book values of Reduction Works at Parrot and at Butte, Montana, to estimated salvage value, per appraisal made in 1904—operations at these works being abandoned	\$1,371,830.26
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Amount written off the book value of the investment in the Bridgeport Copper Company to the equity, held by stock ownership, in the estimated value of the Surplus Assets of that Company.....	305,178.00
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Sundry Liabilities, etc., not on the books April 30, 1899	25,795.95
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\$1,702,804.21

Less amount added to the book value of Buildings, Machinery, etc., at Mines to bring the book value thereof to the actual value as arrived at by an appraisal in 1904..	265,572.51
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1,437,231.70

Adjusted Balance of Surplus Account at April 30, 1899 (the date when the Amalgamated Copper Company acquired stock)	281,009.70
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Add Profit earned from May 1st, 1899, to December 31st, 1909.....	3,938,081.73
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\$4,219,091.43

Deduct Dividends paid from May 1st, 1899, to December, 31st, 1909....	\$4,597,000.00
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Balance, Deficit, December, 31st, 1909	\$377,908.57
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Parrot Silver and Copper Company.

Statistics of Copper Production and Sales and of Silver and Gold Sales.

From May 1st, 1902, to December 31st, 1909.

Copper Production and Sales.

Period.	Copper pro- duced, pounds.	Copper sales, pounds.	Cost per lb. of copper produced af- ter deducting silver and gold saving.	Average price re- ceived per pound of copper sales.
Fourteen months, ending June 30, 1903.....	16,905,300	12,233,511	\$0.08940	\$0.12474
Year ending June 30, 1904	10,589,717	9,244,952	.08216	.12750
“ “ June 30, 1905	9,368,524	13,498,055	.09423	.13389
“ “ June 30, 1906	8,140,341	8,131,500	.11213	.16295
“ “ June 30, 1907	4,910,516	5,518,890	.15525	.19624
“ “ June 30, 1908	3,443,222	3,459,112	.16948	.13358
“ “ June 30, 1909	6,771,708	6,227,149	.13459	.13129
Six months ending December 31, 1909.....	2,305,314	2,873,498	.16970	.13097

Silver and Gold Sales.

Period.	Silver sales, ounces.	Gold sales, ounces.
Fourteen months ending June 30, 1903.....	591,714	2,703
Year ending June 30, 1904	434,915	1,939
“ “ June 30, 1905	560,613	2,445
“ “ June 30, 1906	487,750	1,660
“ “ June 30, 1907	244,827	914
“ “ June 30, 1908	146,245	493
“ “ June 30, 1909	323,145	876
Six months ending December 31, 1909.....	159,112	365

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EXHIBIT C.

Balance Sheet, December 31st, 1909.

Assets.

Fixed (per statement page 7 attached):

Mines and Mining Claims.....	\$767,133.61	
Buildings, Machinery, etc., at old Reduction Works, Butte, Montana	8,211.16	
Precipitating Plant	12,939.27	
Buildings, Machinery, Tools, etc., at Mines	211,924.22	
Office Furniture—East	190.00	
	<hr/>	\$1,000,398.26

Deferred:

Investment in the Capital Stock of the Bridgeport Copper Company	\$45,228.23	
Insurance, etc., unexpired	845.78	
Supplies on hand	15,300.75	
	<hr/>	61,374.76

Current:

Copper, Silver and Gold on hand—Copper at cost; Silver and Gold at market, less allow- ance for Selling Ex- penses	\$363,203.49	
Less Reserve for esti- mated Loss on fin- ished Copper on hand	49,763.37	
	<hr/>	\$313,440.12
Accounts Receivable	574,690.59	
Cash in Banks and on hand	38,206.38	
	<hr/>	926,337.09
		<hr/>
		\$1,988,110.11

Liabilities.

Capital Stock:

Authorized issue 230,000 shares at \$10 each	\$2,300,000.00	
Less unissued	1,500.00	
	<hr/>	\$2,298,500.00

Current:

Wages accrued	\$23,561.00	
Accounts payable	43,957.68	
	<hr/>	67,518.68

Surplus Account Deficit:

Balance June 30, 1909	\$287,802.90	
Loss for the six months ending December 31, 1909, per Profit and Loss Account, page 2 attached..	90,105.67	
	<hr/>	377,908.57
		<hr/>
		\$1,988,110.11

Filed April 17, 1913. Geo. W. Sproule, Clerk.

388 Thereafter, on May 11, 1915, Petition on Appeal and Assignment of Errors was duly filed herein, and said Petition allowed by the court on August 12, 1915, as follows, to wit:

389 District Court of the United States for the District of Montana.

No. 464.

WILLIAM E. WALL et al., Complainants,

vs.

PARROT SILVER & COPPER COMPANY et al., Defendants.

Appeal from the District Court of the United States for the District of Montana from Final Decree (Bourquin, J).

(July 31, 1914.)

Petition of Appeal and Assignment of Errors.

The complainants, believing themselves aggrieved by the final decree in the above-entitled cause, hereby appeal from said decree of the Supreme Court of the United States and pray that a transcript of such part of the record as the parties to this cause shall by præcipe duly indicate, together with the exhibits and also the evidence herein, stated in simple and condensed narrative form, so far as they relate to any of the claims on which error is predicated, and any matter indicated by the defendants, and also the judgment herein rendered, all duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may be proper in the premises. And the complainants hereby assign the errors asserted and intended to be urged, as follows:

1. The court erred in holding, in substance and effect, that the sale of all the property of the Parrot Silver and Copper Company to the Anaconda Copper Mining Company in accordance with the provisions of Sections 4409 to 4412 inclusive of the Revised Codes of the State of Montana was valid as against dissenting stockholders
 390 and not in violation of rights secured to these complainants by the Constitution of the United States.

2. The court erred in not holding that the sale of which the

plaintiffs complained and sought by their bill to have set aside, was voidable because the Statutes of Montana by virtue of which said sale was made was in violation of the protection guaranteed to the complainants by the Constitution of the United States.

3. The court erred in holding, in effect, that a sale made under the provisions of Sections 4409 to 4412 inclusive of the Revised Codes of the State of Montana was not repugnant to the Fourteenth Amendment of the Constitution of the United States and voidable with respect to the complainants.

4. The court erred in not holding, in substance, that Sections 4409 to 4412 inclusive of the Revised Codes of the State of Montana are repugnant to the provisions of the Fourteenth Amendment of the Constitution of the United States and in violation of the rights secured to the complainants thereby.

5. The court erred in holding, in substance and effect, that the appraisal proceedings prescribed by Sections 4411 and 4412 of the Revised Codes of the State of Montana and constituted due process of law with respect to the taking of the Complainants' property within the meaning of the Fourteenth Amendment of the Constitution of the United States.

(The five foregoing assignments are different forms of stating the same alleged error.)

6. The court erred in holding, in substance that, with respect to a sale made in accordance with the provisions of Sections 4409 to 4412 inclusive of the Revised Codes of the State of Montana, a dissenting shareholder of the vendor Company must choose between two remedies, an appraisal or an avoidance of the sale, and that a choice of the former estops him thereafter from resorting to the latter; or, at least, that a choice of appraisal with knowledge of all material facts is in its nature condonation of the fraud, if any, and acquiescence in the sale, and that he cannot thereafter maintain a suit to avoid the sale.

7. The court erred in finding and holding that "it follows that they (the complainants) so far acquiesced in the sale as to elect appraisal, and so cannot recede therefrom and secure the inconsistent remedy of avoidance of the sale."

8. The court erred in holding, in substance, that every stockholder in a Montana mining corporation when he becomes a stockholder in such corporation consents to be controlled by the provisions of Sections 4409 to 4412 inclusive of the Revised Codes of the State of Montana, and that the provisions of those sections form a part of his contract with all other stockholders in the corporation.

9. The court erred in finding that the evidence discloses that when plaintiffs begun the appraisal action they had knowledge of all the facts and fraudulent acts alleged in this suit, in so far as they are sustained by proof, to the extent any stockholder has or may have of corporate transactions openly accomplished.

10. The court erred in holding that a dissenting stockholder has a plain, speedy and adequate remedy at law in the appraisal proceedings provided by the statute (Montana Revised Codes of 1907, Sections 4409-4412) wherein he secures the value of his shares.

11. The court erred in dismissing the bill.

12. The court erred in not granting the complainant relief.

13. The court erred in upholding the sale and transfer of the assets of the Parrot Silver & Copper Company to the Anaconda Copper Mining Company made under the provisions of Sections 4409 to 4412, inclusive, of the Revised Codes of the State of Montana, for the reason that said code provisions are in violation of the

Fourteenth Amendment of the Constitution of the United States, in this respect; that by virtue thereof, through a two-thirds voting control of the capital stock of said Parrot Silver & Copper Company, the complainants, minority stockholders in said Company, were compelled either to accept in exchange for their Parrot stock certain shares of Anaconda stock, or to go into court and seek an appraisal of the assets of the Parrot Company, after those assets had been largely depleted and practically wiped out of existance by the same control.

Wherefore the complainants pray that said final decree of the District Court of the United States for the District of Montana, dismissing the complainants' bill may be reversed, and that said Court may be ordered to enter a decree in accordance with the prayers of the bill, or in such other form as to said Supreme Court of the United States shall seem just.

WILLIAM E. WALL,
ETTA FOSS.

Ext. Will of Louis Foss.

By Their Solicitors, ASA P. FRENCH,
ROB'T L. CLINTON.

Allowed, Aug. 12, 1915.

BOURQUIN,
United States District Judge.

Filed May 11, 1915. Geo. W. Sproule, Clerk.

393 Thereafter, on August 12, 1915, Bond on Appeal was duly filed herein, in the words and figures following, to wit:

394 In the District Court of the United States, in and for the District of Montana.

WILLIAM E. WALL et al., Complainants.

v.

PARROT SILVER & COPPER COMPANY et al., Defendant.

Bond on Appeal.

Know All Men by These Presents that we William E. Wall, of Boston, in the Commonwealth of Massachusetts, and Etta Foss, Executrix of the will of Louis Foss, late of said Boston, deceased, testate, as principals, and the Massachusetts Bonding & Insurance Company, a corporation under the laws of said Commonwealth having a principal place of business in said Boston, as sureties, are holden and stand firmly bound unto the above named Parrot Silver

& Copper Mining Company and the Anaconda Copper Mining Company, in the sum of five hundred (500) dollars for the payment of which well and truly to be made we bind ourselves jointly and severally and each of our heirs, executors, administrators, successors and assigns firmly by these presents. Sealed with our seals and dated this 31st day of August, 1914.

Whereas, the above-named complainants have prosecuted an appeal to the Supreme Court of the United States to reverse a decree rendered and entered in the above entitled cause in the United States District Court in and for the District of Montana on the 31st day of July, 1914:

Now therefore, the condition of this obligation is such that if the above named William E. Wall and and Etta Foss, as she is executrix as aforesaid, shall prosecute their said appeal to effect, and shall answer all the damages and costs that may be awarded
 395 against them if they fail to make good their appeal then the above obligation is to be void; otherwise to remain in full force and virtue.

It is expressly agreed by the Massachusetts Bonding & Insurance Company, the surety above named, that in case of a breach of any condition of this bond the Court may, upon notice of not less than ten days to said Massachusetts Bonding & Insurance Company proceed summarily in this action to ascertain the amount which said surety is bound to pay on account of such breach, and render judgment against said Massachusetts Bonding & Insurance Company and award execution therefor.

WILLIAM E. WALL, [SEAL.]

ETTA FOSS, *Ex'x.* [SEAL.]

MASSACHUSETTS BONDING & INSURANCE
 COMPANY.

By SAMUEL PERRY,
Vice-President.

Attest:

GEO. W. PERRY,
Assistant Secretary. [SEAL.]

The foregoing bond on appeal is hereby approved this 12th day of August, 1915.

BOURQUIN, J.

Filed Aug. 12, 1915. Geo. W. Sproule, Clerk.

396 Thereafter, on June 10, 1915, a *Præcipe* for Transcript on Appeal was duly filed herein, in the words and figures following, to-wit:

397 United States District Court, District of Montana.

No. 464.

WILLIAM E. WALL, et al., Complainants-appellants,
vs.

PARROT SILVER & COPPER COMPANY and ANACONDA COPPER MINING
COMPANY, Defendants-appellees.

Appellants' Præcipe.

Under Equity Rule 75.

The Complainants-appellants, indicate the following as the portions of the record to be incorporated in the record on the Transcript on Appeal to the Supreme Court of the United States in the above entitled cause;

1. Bill of Complaint as amended;
2. Answers.
3. Replications.
4. Suggestions of death of complainant Louis Foss and appearance of executrix as a party hereto;
5. Such portions as are essential to the decision of the questions presented by this appeal and stated in simple condensed, narrative form of the depositions of Albert C. Burrage, Richard W. Willard, Edward G. Storey, Charles D. Burrage, Sidney Chase, Charles H. Bowen, William E. Wall, Louis Foss, Thomas W. Lawson, George F. Bartlett, William Rockefeller, Jared E. Gaylord, Thomas Wallace, Jr., Charles H. Pine, Andrew Grafius, John D. Ryan, Albert H. Melin, Harry I. Meehan, B. B. Thayer, William G. Rockefeller, James F. Kemp, O. L. Dillenbeck, William F. Battin, Harry A. Galloway, Roy S. Alley, John Gillie, Walter H. Weed, and J. C. Pyle.
- 398 6. Deed from the Parrot Silver & Copper Company to the Anaconda Copper Mining Company, dated May 31, 1910.
7. Section 1012 of Codes and Statutes of Montana in force July 1, 1895.
8. Sections 4405, 4408, 4409, 4410, 4411, and 4412, Division 1, Part IV, Title X, "Mining Corporations" Revised Codes of Montana of 1907.
9. Charter of Defendant Parrot Silver & Copper Company.
10. Certificate of Extension of the Charter of Defendant Parrot Silver & Copper Company.
11. Complainants' Exhibit "G." (Notice of special meeting).
12. Complainants' Exhibit "H." (Circular letter, omitting the map, dated New York, April 7, 1910, to the stockholders of the Parrot Silver & Copper Company).
13. Opinion of the Court.
14. Final decree.
15. Petition on appeal and assignment of errors.

16. Bond on appeal.

17. Præcipe.

ASA P. FRENCH,
ROBERT L. CLINTON,
Solicitors for Complainants.

399 I hereby certify, That on the 4th day of June, 1915, at the City of New York, in my district, I served the within Appellants Præcipe Under Equity Rule 75 upon the within named Defendants-Appellees Parrot Silver and Copper Company by exhibiting to A. H. Melin, as Secretary of said Company, at #42 Broadway, N. Y. City, the within original, and at the same time leaving with him a copy thereof.

THOMAS D. McCARTHY,
*United States Marshal,
Southern District of New York.*

Dated June 5, 1915.

I hereby certify, that on the 4th day of June, 1915, at the City of New York, in my district, I served the within Appellants Præcipe Under Equity Rule 75 upon the within named Defendants-Appellees Anaconda Copper Mining Company by exhibiting to A. H. Melin, as Secretary of said Company, at #42 Broadway, N. Y. City, the within original, and at the same time leaving with him a copy thereof.

THOMAS D. McCARTHY,
*United States Marshal,
Southern District of New York.*

Dated June 5, 1915.

Filed June 10, 1915. Geo. W. Sproule, Clerk.

400 Thereafter, on September 4, 1915, a Citation on appeal was duly issued herein, which original Citation is hereto annexed and is in the words and figures following, to wit:

401 *Citation on Appeal.*

UNITED STATES OF AMERICA, ss:

The President of the United States to Parrot Silver and Copper Company and Anaconda Copper Mining Company, both corporations organized under the laws of the State of Montana, and each having a principal place of business in Butte in said State of Montana, and being severally citizens of said State and of the United States, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at Washington, on the third day of November next pursuant to an appeal duly obtained from a decree of the District Court of the United States for the District of

Montana, wherein William E. Wall of Boston in the District of Massachusetts, and Etta Foss, as she is executrix of the will of Louis Foss late of Brookline, in said District of Massachusetts, deceased, testate, are appellants, and you are appellees, to show cause, if any there be, why the said decree, entered against the said appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable George M. Bourquin, judge of the District Court of the United States for the District of Montana, this 4th day of September in the year of our Lord one thousand nine hundred and fifteen.

[Seal United States District Court, District of Montana,
Southern Division, 1892.]

GEO. W. SPROULE, *Clerk*,
By HARRY H. WALKER, *Deputy*.

Due service of the above citation is hereby acknowledged this 4th day of September, 1915.

C. F. KELLEY,
L. O. EVANS,
W. B. RODGERS,
D. GAY STEVERS, AND
D. M. KELLY,

Solicitor- for Defendants, Appellees.

402 [Endorsed:] No. 464. William E. Wall et al. vs. Parrot Silver & Copper Company et al. Citation on Appeal. From the Office of Asa P. French, 45 Milk Street, Boston. Filed September 4, 1915. Geo. W. Sproule, Clerk, by Harry H. Walker, Deputy Clerk.

403 *Certificate of Clerk U. S. District Court to Transcript of Record.*

UNITED STATES OF AMERICA,
District of Montana, ss:

I, Geo. W. Sproule, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, the Supreme Court of the United States, that the foregoing volume, consisting of 403 pages, numbered consecutively from 1 to 403 inclusive, is a full, true and correct transcript of all things mentioned in the præcipe for transcript on appeal herein, and of said præcipe, as appears from the original files and records of said court in my custody as such Clerk; and I further certify and return that I have annexed to said transcript and included within said paging the original Citation issued in said cause. I further certify that I do transmit herewith Defendants' original Exhibits Nos. 2, 3 and 4 (being maps) mentioned as a part of the record in the Statement of the Evidence in said cause.

I further certify that the costs of the transcript of record amount to the sum of sixty-one and 70/100 Dollars (\$61.70), and have been paid by the appellants.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Butte, Montana, this 18th day of October, A. D. 1915.

[Seal United States District Court, District of Montana,
1890.]

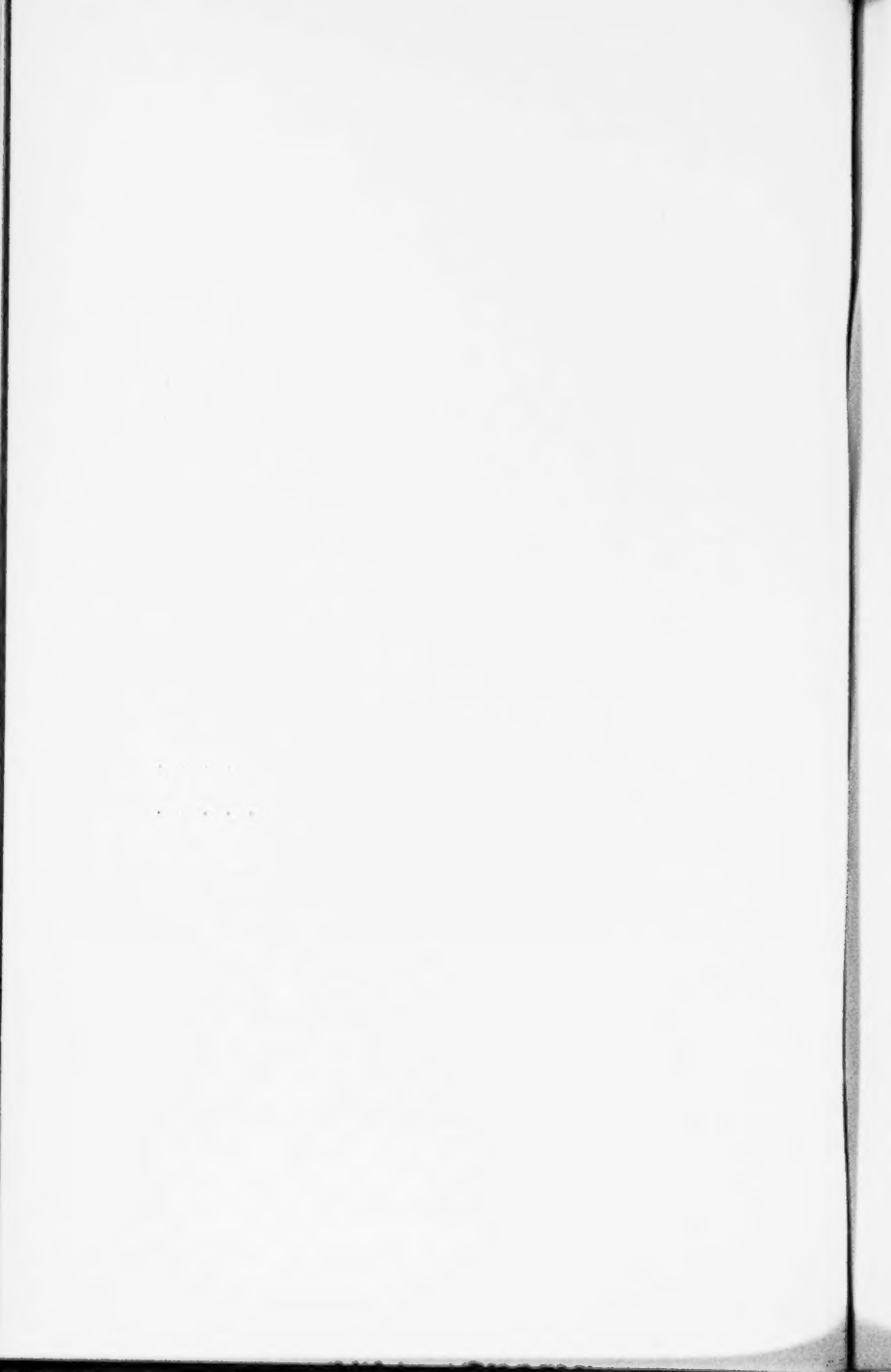
GEO. W. SPROULE, *Clerk*.

[United States internal revenue documentary stamp, series of 1914, 10 cents, canceled 10/18/1915. G. W. S.]

Endorsd on cover: File No. 24,968. Montana D. C. U. S. Term No. 271. William E. Wall and Etta Foss, executrix of the will of Louis Foss, deceased, appellants, vs. Parrot Silver and Copper Company and Anaconda Copper Mining Company. Filed October 29th, 1915. File No. 24,968.

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Supreme Court of the United States

OCTOBER TERM, 1916.

No. 271.

WILLIAM E. WALL ET AL., APPELLANTS

v.

PARROT SILVER AND COPPER COMPANY
ET AL.

BRIEF FOR APPELLANTS.

STATEMENT OF THE CASE.

The complainants, citizens of Massachusetts, and stockholders since 1902 and 1907 respectively, of the defendant, Parrot Silver and Copper Company, in which they own 1,210 of a total of 229,850 issued shares, seek by this bill in equity the avoidance of a transfer, on May 31, 1910, of all the property of that Company to the defendant, Anaconda Copper Mining Company, both chartered under the laws of the State of Montana and having adjoining mines in the City of Butte in that State (Record, p. 84).

The bill is inartificially and awkwardly drawn, but its contentions are clear and, for the purpose of this argument, can be briefly stated.

It is alleged, in substance, that the transfer should be

avoided because it was accomplished by means of a plan devised and consummated by certain individuals, some of whom are named in the complaint, to obtain control of both these corporations through the medium of a holding corporation, the Amalgamated Copper Company, and, after depleting the assets of the Parrot Company in the interest of the Anaconda Company, to transfer, pursuant to the provisions of certain statutes of Montana, the material portions of which are hereinafter set forth, all the property of the Parrot Company to the Anaconda Company in exchange for stock of the latter. It is further alleged, in substance, that, as invoked to authorize and effect this transfer, these statutes did not accord to the complainants the protection of due process of law involving just compensation secured to them by the Constitution of the United States (Record, pp. 8, 9, 10) in that, under the circumstances disclosed by the evidence, they compelled the complainants to give up their stock for stock of Anaconda on an arbitrary exchange-basis of twenty-three shares of Parrot for nine of Anaconda, which the complainants believed to be inadequate consideration, or to resort to appraisal proceedings which contemplated a valuation as of the date of their dissent from the transfer (Record, p. 193, bottom), and did not afford to dissatisfied stockholders contending that such appraisal should be of an earlier date because of an unfair, illegal, or fraudulent depletion of the property in anticipation of such transfer, an opportunity to assert and prove their contention. In other words, the complainants claimed that they were denied due process of law because these statutes said to them, in effect, "You must take in exchange for your stock-interest in the Parrot Company an arbitrarily fixed number of shares of the stock of the Anaconda Company, the actual value of which you do not know, or you must proceed within twenty days to obtain a judicial appraisal of the value of your interest as of the date of your notice protesting against the transfer, and will not be heard to say that an appraisal as of that date is unfair, no matter how overwhelming the

evidence may be by which your contention could be demonstrated."

It appeared in testimony, and was uncontradicted, that at some time in or before the year 1899, Henry H. Rogers, Albert C. Burra and others began negotiations which resulted in the purchase by them, early in that year, of a majority interest in the stock of the Parrot Company and of the Anaconda Company (Testimony of Albert C. Burra, Record, pp. 61, 62). At about the same time these gentlemen and others organized and incorporated, under the laws of New Jersey, the Amalgamated Copper Company to take over stock in various mining corporations, including the two defendants, and to obtain control of all similar properties in which they might be able to acquire an interest (p. 62). The Parrot Company at that time was a prosperous, going concern, showing large assets and paying very substantial dividends. Later, however, and down to the date of the transfer complained of, May 31, 1910 (pp. 181, 182), its plant and properties were gradually depleted, as the uncontradicted evidence tends to show, in anticipation, as the complainants claim and the defendants deny, of the proposed transfer to the Anaconda Company herein sought to be avoided, or of a similar transfer to some other corporation, in order that the consideration to be paid by the vendee should be reduced, and whereby it was in this case reduced, to a relatively small amount.

This transfer was approved, on April 30, 1910, by a vote in excess of two-thirds of the stock of the Parrot Company, and the deed consummating the transfer was executed on May 31, 1910. The Amalgamated, created and controlled by the Rogers syndicate, then owned a majority of the stock of each defendant corporation. The complainants and four other stockholders (p. 68) joined together and made application to have the property of the Parrot Company appraised under the laws of Montana, protesting, in substance, that they should not be compelled to seek relief under statutes which did not accord to them due process of law

(Record: Complaint, pp. 8 and 9; Answers, pp. 31, 32, 47, and 48). These proceedings, however, were not pressed and were dropped, and steps were taken to institute this suit in November or December, 1910 (p. 69).

The directorates of the Amalgamated, the Parrot, and the Anaconda, as the court below found (p. 57), were more or less interlocking, to such an extent, indeed, as the complainants contend, that it was practically in the power of the directors common to these corporations to manipulate them as they saw fit. The court below found that control had been obtained substantially as hereinbefore stated, but ruled that the complainants were given a plain, speedy and adequate remedy at law under the appraisal proceedings provided by the Montana statutes and that, having begun such proceedings, they were estopped from bringing this suit; declared the sale valid and without fraud, and refused or neglected to pass specifically upon the constitutional question raised and presented for its determination upon the pleadings and in final argument (pp. 8, 9, 10, 204, 205).

The material portions of the statutes in question, which were enacted in 1899 (p. 7), and are quoted *verbatim* on pages 191 to 194 of the Record, are as follows:—

“SECTION 4409. Sale of Property.—Procedure.—That the board of directors . . . of any mining corporation organized under the laws of either the Territory or State of Montana, whether before or after the passage of this act . . . shall have power, and upon request of stockholders of the corporation representing at least one-half the amount of its outstanding capital stock and of record on the books of the Company, it shall be their duty to call, by resolution, which resolution shall state whether the whole or only a part of the property of the corporation, and if the latter shall designate in general terms what part is to be sold, leased, mortgaged, exchanged or disposed of for property or for stock of another corporation, . . . a meeting of the stockholders of such corporation . . . for the purpose of considering the question of selling . . . or

disposing of for other property, or for the whole or part of the capital stock of any other corporation, or for otherwise disposing of the whole or any part of the . . . assets of every kind and description of such mining corporation. Such meeting shall be held at the principal office or place of business of such corporation, and at least thirty days previous notice of the time and place of such meeting shall be given to each person who appears as a stockholder upon the books of the corporation. . . . Such notice . . . shall state the time and place of the meeting, and that it is to consider, and decide upon the question of disposing of, selling, leasing, mortgaging, exchanging for property or for the whole or any part of the capital stock of any other corporation, or otherwise disposing of the whole or any part of the property of said corporation. . . . Upon the day appointed for said meeting if stockholders representing at least two-thirds of the whole number of shares of the capital stock of the corporation then outstanding and of record on the books of the company, appear in person or by agents or proxies filed with the secretary, the stockholders shall organize by electing one of their number chairman and some suitable person secretary. Thereupon . . . if stockholders representing at least two-thirds of the whole number of shares of the capital stock . . . appearing at said meeting in person or by agents or proxies . . . vote in favor of such proposition . . . the said proposition or resolution shall be taken and adopted as the act of the corporation and shall be carried out as such. . . . *Stockholders voting against said proposition or resolution shall be taken as dissenting therefrom.*"

"SECTION 4410. Dissolution upon Sale.—If a disposition shall be made by sale, exchange or otherwise, as above provided of the whole of the property of such corporation, the corporation shall thereby be dissolved, and its affairs shall be wound up, as provided for in other cases of the dissolution of corporations."

"SECTION 4411. Rights of Dissenting Stockholders.—Appraisalment.—*Any stockholder who shall not . . . have voted for or authorized the proposition or resolution for the disposition of property which may have been adopted at such stockholders' meeting, may, within twenty days after the date of said stockholders'*

meeting, give written notice to the said corporation that he does not assent thereto, and also a like notice to the grantee or vendee, . . . and demand payment of the value of his stock, and within ten days after the service of said notices he must, or the said corporation, or its grantee, or vendee, may, make application in the district court of the county where the principal place of business of the corporation is situated to have the value of his stock fixed and appraised, of which application at least ten days' previous notice must be given by the persons so applying to the other parties. . . . Upon such application the said district court shall appoint three competent and disinterested persons as appraisers, and designate the time and place of their first meeting to appraise the value of the stock of such dissenting stockholder, and give them such directions as the said court may think proper. . . . The said appraisers shall meet at the time and place designated by the court, and they or any two of them shall take an oath to honestly and faithfully discharge their duties and shall hear and take evidence in relation to the value of the stock of such dissenting stockholder at the time of his dissent and find the value thereof, and return and file their report and appraisal with the clerk of said court. The charges and expenses of such appraisal shall be paid by the corporation or its grantee or vendee."

"SECTION 4412. Appeal from Appraisalment.— Either party to the appraisalment and award of such appraisers may within thirty days from the filing of the same, and service of notice thereof, appeal from such award to the district court of the county in which the same is made and filed, and thereupon the value of such stock shall be re-assessed by a jury in the same manner as appeals are taken and trial had on appeals from the assessment of commissioners in condemnation proceedings provided by law. When such appraisalment or award shall become final, the court shall enter judgment in favor of such dissenting stockholder and against the corporation and its grantee or vendee for the amount of said award with expenses and costs of proceedings, and execution may be issued on said judgment as in other cases. . . . When the amount of such appraisalment and costs shall have been paid to

or collected by such dissenting stockholder or deposited with the clerk of said court for him, he shall cease to have any interest in said stock or in the corporate property of such corporation which may have been sold or disposed of in pursuance of the resolutions of the stockholders' meeting as herein provided, and the stock of said dissenting stockholder shall thereupon become the property of the party satisfying the said judgment or appraisal unless otherwise provided for by contract between such corporation and its grantee."

In other words, and in brief, these statutes, as applied to the facts of the case at bar, provide:

(1) that a mining corporation chartered under the laws of the State of Montana may, after due notice, at a stockholders' meeting called for the purpose, by a vote of stockholders representing at least two-thirds of the whole number of shares of the capital stock issued, sell or transfer to another corporation all its assets in exchange for stock of such other corporation;

(2) that a minority stockholder who is unwilling to surrender his stock because he believes that the basis of exchange recommended by the directors (Sec. 4409) is inadequate, or for any other reason, may, within twenty days after such meeting, give notice that he does not assent to such sale or transfer;

(3) that he must, within ten days after the service of such notice, make application in the district court of the county where the principal place of business of the corporation is situated for the appointment of appraisers to ascertain the value of his stock as of the date of his dissent from the action of the majority stockholders; and

(4) that if such appraisal is had, and he is dissatisfied with the amount awarded, he may appeal from the award to the court and have the value of his shares reassessed by a jury.

Pursuant to the provisions of these statutes, stockholders representing more than two-thirds of the shares of the cap-

ital stock of the defendant, Parrot Silver and Copper Company, on recommendation of its board of directors, at a meeting held April 30, 1910, adopted a resolution (p. 167): "That this company proceed to sell, assign, transfer, convey and dispose of all the property of every kind or character, real, personal and mixed, corporeal and incorporeal, in law and in equity, wherever the same may be situated, owned or possessed by it, to the said Anaconda Copper Mining Company, provided the Anaconda Copper Mining Company will issue and deliver to this company, in payment therefor 90,000 shares of the capital stock of said Anaconda Copper Mining Company."

The complainants and certain other stockholders voted against this resolution (p. 179).

The complainants' attitude with respect to the action of the majority stockholders in approving this transfer was that it was the result of a prearranged plan which was arbitrary and unfair, and that they believed that they should not be compelled to choose between accepting their proportion of the 90,000 shares of the Anaconda Company to be issued and delivered in exchange for the assets of the Parrot Company and engaging in litigation to determine the amount of money due them; that such proposed exchange would not afford them a proper equivalent of their stock, and that, with respect to the provisions of Sections 4411 and 4412 of the statutes, an appraisal as of the date of their dissent from the action of the majority would be unfair and inadequate because, as they alleged, the assets of the Parrot Company had been extensively depleted in anticipation of such transfer.

The Record contains all the evidence essential to the decision of the questions presented by this appeal (p. 219).

THE JURISDICTIONAL QUESTION HOW RAISED BY THE RECORD.

The constitutional question upon which the complainants have appealed to this Court was raised in the bill of complaint (pp. 8, 9, and 10, §§ 20, 21 and 30) and in argument before the court below (Stipulation, pp. 203-205). Upon an inspection of the Record at the pages referred to, it appears that from the beginning to the end of the case in the District Court the complainants specifically contended that the statutes of Montana, under which the transfer complained of was made, denied them, for reasons variously stated in the pleadings and arguments, due process of law and just compensation. In making this specific contention with respect to their clients' constitutional rights, both the solicitor who drew the bill and counsel who argued the case below erroneously referred, however, to the source of these rights as the Fifth Amendment to the Constitution of the United States.

SPECIFICATION OF ERRORS RELIED UPON.

1. The court erred in holding, in substance and effect, that the sale of all the property of the Parrot Silver and Copper Company to the Anaconda Copper Mining Company in accordance with the provisions of Sections 4409 to 4412 inclusive of the Revised Codes of the State of Montana was valid as against dissenting stockholders and not in violation of rights secured to these complainants by the Constitution of the United States.

2. The court erred in not holding that the sale of which the plaintiffs complained and sought by their bill to have set aside was voidable because the Statutes of Montana by virtue of which said sale was made was in violation of the protection guaranteed to the complainants by the Constitution of the United States.

3. The court erred in holding, in effect, that a sale made under the provisions of Sections 4409 to 4412 inclusive

of the Revised Codes of the State of Montana was not repugnant to the Fourteenth Amendment of the Constitution of the United States and voidable with respect to the complainants.

4. The court erred in not holding, in substance, that Sections 4409 to 4412 inclusive of the Revised Codes of the State of Montana are repugnant to the provisions of the Fourteenth Amendment of the Constitution of the United States and in violation of the rights secured to the complainants thereby.

5. The court erred in holding, in substance and effect, that the appraisal proceedings prescribed by Sections 4411 and 4412 of the Revised Codes of the State of Montana constituted due process of law with respect to the taking of the complainants' property within the meaning of the Fourteenth Amendment of the Constitution of the United States.

6. The court erred in holding, in substance, that, with respect to a sale made in accordance with the provisions of Sections 4409 to 4412 inclusive of the Revised Codes of the State of Montana, a dissenting shareholder of the vendor Company must choose between two remedies, an appraisal or an avoidance of the sale, and that a choice of the former estops him thereafter from resorting to the latter; or, at least, that a choice of appraisal with knowledge of all material facts is in its nature condonation of the fraud, if any, and acquiescence in the sale, and that he cannot thereafter maintain a suit to avoid the sale.

7. The court erred in finding and holding that "it follows that they [the complainants] so far acquiesced in the sale [transfer] as to elect appraisal, and so cannot recede therefrom and secure the inconsistent remedy of avoidance of the sale [transfer]."

8. The court erred in holding, in substance, that every stockholder in a Montana mining corporation when he becomes a stockholder in such corporation consents to be controlled by the provisions of Sections 4409 to 4412 in-

clusive of the Revised Codes of the State of Montana, and that the provisions of those sections form a part of his contract with all other stockholders in the corporation.

9. The court erred in finding that the evidence discloses that when plaintiffs began the appraisal action they had knowledge of all the facts and fraudulent acts alleged in this suit, in so far as they are sustained by proof, to the extent any stockholder has or may have of corporate transactions openly accomplished.

10. The court erred in holding that a dissenting stockholder has a plain, speedy, and adequate remedy at law in the appraisal proceedings provided by the statute (Montana Revised Codes of 1907, Sections 4409-4412) wherein he secures the value of his shares.

.

13. The court erred in upholding the transfer of the assets of the Parrot Silver and Copper Company to the Anaconda Copper Mining Company made under the provisions of Sections 4409 to 4412 inclusive of the Revised Codes of the State of Montana, for the reason that said code provisions are in violation of the Fourteenth Amendment of the Constitution of the United States, in this respect; that by virtue thereof, through a two-thirds voting control of the capital stock of said Parrot Silver and Copper Company, the complainants, minority stockholders in said Company, were compelled either to accept in exchange for their Parrot stock certain shares of Anaconda stock or to go into court and seek an appraisal of the assets of the Parrot Company, after those assets had been largely depleted and practically wiped out of existence by the same control.

QUESTIONS INVOLVED FOR ARGUMENT.

The complainants contend:—

(1) That the jurisdiction of this Court was seasonably and properly invoked under Section 238 of the Judicial Code.

(2) That the provisions of Sections 4409 to 4412 inclusive of the Revised Codes of the State of Montana, by virtue of which the transfer complained of in this suit was effected, did not accord to the complainants due process of law involving just compensation secured to them by the Constitution of the United States, in that these statutes required complainants, after the transfer had been effected against their protest, either to accept in exchange for their stock in the defendant Parrot Company certain stock in the defendant Anaconda Company, the amount of which was arbitrarily fixed and which they believed to be inadequate in value, or to engage in litigation which required them to proceed within twenty days to obtain a judicial appraisal as of the date of their dissent from the transfer, notwithstanding their contention that such appraisal should be of an earlier date, because, as they claimed, in effect, there had been an unfair, illegal, or fraudulent depletion of the assets of the Parrot Company in anticipation of such transfer.

(Assignments of Error 1 to 5 inclusive, and 13;
Record, pp. 215-217.)

(3) That Sections 4409 to 4412 inclusive of the Revised Codes of the State of Montana did not, under the circumstances, and in the light of the complainants' contentions, afford them, as ruled by the court below, a plain, speedy, and adequate remedy at law, in that these statutes denied them opportunity to assert and prove their claim that an appraisal as of the date of their dissent from the transfer was an unfair basis for the ascertainment of the value of

their stock because of the fraudulent, illegal, or unfair depletion of the assets of the Company before the date of the sale and in contemplation thereof.

(Assignment 10, p. 216.)

(4) That the fact that the complainants, under protest and in order to preserve their rights, began proceedings under Sections 4409 to 4412 of the Revised Codes of the State of Montana, which were not pressed and were dropped, does not estop them, as ruled by the court below, from seeking in equity to avoid the transfer, and did not constitute a condonation of the fraud, if any, nor an acquiescence in the transfer.

(Assignments 6 and 7, p. 216.)

(5) That the complainants when they became stockholders of the Parrot Company did not thereby unqualifiedly consent, as ruled by the court below, to be controlled by the provisions of Sections 4409 to 4412 inclusive of the Revised Codes of the State of Montana, and cannot be held to have so consented, if these sections, as applied to the situation alleged by the complainants to exist in the case at bar, were obnoxious to the provisions of the Constitution of the United States, or were unfairly or oppressively invoked by the majority.

(Assignment 8, p. 216.)

(6) That there was no evidence which justified the court below in finding, as it did, that when the complainants "began their appraisal action they had knowledge of all facts and fraudulent acts alleged in this suit, in so far as they are sustained by proof, to the extent any stockholder has or may have of corporate transactions openly accomplished," and that therefore, inferentially, it was not competent for them to institute this suit.

(Record, p. 56; Assignment 9, p. 216.)

ARGUMENT.

I.

THE APPELLATE JURISDICTION OF THIS COURT WAS SEASONABLY AND PROPERLY INVOKED UNDER SECTION 238 OF THE JUDICIAL CODE.

Section 238 of the Judicial Code (Act of March 3, 1911), so far as applicable to the case at bar, provides that—

“Appeals . . . may be taken from the district courts . . . direct to the Supreme Court . . . in any case in which . . . the law of a State is claimed to be in contravention of the Constitution of the United States.”

As set forth in the Statement of the Case (p. 9 *supra*), these appellants, in their bill of complaint, specifically contended (pp. 8, 9, and 10) that Sections 4409 to 4412, inclusive, of the statutes of Montana, by virtue of which the transfer sought to be avoided by this suit was effected, were repugnant to the Constitution of the United States in that they denied to them that due process of law which is guaranteed by the Federal Constitution. This case thereby became one in which “a law of a State is claimed to be in contravention of the Constitution of the United States.” The appellants said, in effect, to the court below at the threshold of the case, and reiterated in argument (p. 205): “We ask you to declare these state statutes invalid because they permit our property to be taken without that due process which the Federal Constitution ensures to us. If you sustain our contention in this respect, the transfer which we complain of should be set aside.” It cannot be urged that there was any ambiguity or lack of precision in formulating the substance of this claim, and, if they had stopped there, there would have been no pretext for raising any question

as to the jurisdiction of this Court (*Penn Mutual Life Insurance Co. v. Austin*, 168 U. S. 685, 695). In making this contention, however, as to the scope and application of which there could be no misunderstanding, both the solicitor who drew the bill and counsel who argued the case in the District Court, erroneously referred to the source of the protection invoked as the Fifth Amendment. The claim itself was unmistakably defined and asserted. The constitutional citation was inaccurate either because of misapprehension or inadvertence. In the Assignment of Errors (p. 216) reference was made to the appropriate article.

The case at bar is unlike *Chapin v. Fye* (179 U. S. 127), *Winous Point Shooting Club v. Caspersen* (193 U. S. 189), *Atlantic Coast Line R.R. Co. v. Mims* (242 U. S. 532), and others dealing with writs of error to a state court, not only because the jurisdiction here is invoked under a different statute and in an equity case on appeal from a federal court, and because of the difference in the appellate relationship of the Supreme Court to a state court and an inferior federal court, but also and chiefly because, in the case at bar, there was, as has been stated, a specific allegation in the court below, from the outset, of a claim complete and accurate in its substance, that a state statute, by virtue of which the appellants' property was taken from them, was in contravention of the Federal Constitution in that it did not accord to the appellants due process of law. In the three cases last cited, jurisdiction was denied because the claim of repugnancy to the Constitution was not made, or not seasonably made, in the state court, the decision of which to that effect has been repeatedly asserted by this Court to be binding upon it.

It seems to us inconceivable, in these days of a liberal and benign administration of the law in which technicalities are in disfavor and a harsh application of rules is avoided whenever possible, that these complainants should be denied a hearing in the highest court of the land, and should now consequently be precluded from pursuing their

remedy in any other tribunal, by a rule so technical and arbitrary as that which must be formulated and applied in order to dismiss this suit for lack of jurisdiction.

II.

SECTIONS 4409 TO 4412 INCLUSIVE OF THE REVISED CODES OF THE STATE OF MONTANA, BY VIRTUE OF WHICH THE TRANSFER COMPLAINED OF IN THIS SUIT WAS EFFECTED, DID NOT ACCORD TO THE COMPLAINANTS DUE PROCESS OF LAW INVOLVING JUST COMPENSATION SECURED TO THEM BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

(Assignments of Error 1 to 5, and 13, *supra*.)

"Due process" under the Fourteenth Amendment imports, among other things, process in which, where private property is taken by public authority, machinery for obtaining its fair equivalent in money is provided.

"A judgment of a state court, even if it be authorized by statute, whereby private property is taken for the State or under its direction for public use, without compensation made or secured to the owner, is, upon principle and authority, wanting in the due process of law required by the Fourteenth Amendment of the Constitution of the United States."

Chicago, etc., R.R. Co. v. Chicago, 166 U. S. 226, 233-235, 241.

Holden v. Hardy, 169 U. S. 366, 390 (bottom).

"Compensation" can mean nothing less than just compensation arrived at under a rule of damages by which the actual loss or injury sustained can be ascertained, and its equivalent paid to the owner in money.

"Due process" under the Fourteenth Amendment also imports that the Federal Government will see to it that

citizens of the several States of the United States are protected in their lives, liberty, and property by process conformable to the "natural and inherent principles of justice" which shall ensure to them, among other things, the opportunity to present all pertinent and available questions necessary to the trial and determination of their full claim to a tribunal by which, if the equivalent of property taken from them is sought, "just compensation therefor shall be awarded."

Wiscart v. Dauchy, 3 Dall. 321, 329.

Hagar v. Reclamation District, 111 U. S. 701, 708.

Spencer v. Merchant, 125 U. S. 345, 354.

Chicago, etc., R.R.Co. v. Chicago, 166 U. S. 226, 234.

Turpin v. Lemon, 187 U. S. 51, 58.

In the light of these decisions, the complainants submit that the statutes in question did not afford them due process of law for the following reasons:—

First. They compelled them either to surrender their stock for stock of another corporation (Section 4409), or to resort to litigation to ascertain the value of their stock as of the date of their dissent from the action of the majority authorizing the transfer (Section 4411).

Second. They compelled the complainants either to surrender their stock for stock in another corporation or to wait for money compensation until the conclusion of litigation which might be long protracted, and of which the initial and current expenses, in the first instance at least, would devolve upon them.

Third. They did not afford the complainants opportunity to assert and offer evidence to support their claim that an appraisal as of the date of their dissent from the action of the majority would be unfair.

Fourth. Assuming that the complainants were right in this contention, these statutes did not provide an instrumentality which would give them just compensation as an equivalent for their stock.

To state the proposition in a different way, the results of the transfer complained of were:—

(1) All the assets of the Parrot Company went to the Anaconda Company.

(2) The consideration was stock of the Anaconda Company the amount of which was arbitrarily fixed by the majority stockholders, and there was no evidence to show that it was a fair equivalent for such assets. While there was conflicting testimony as to the condition of the Parrot mine, at the time of the transfer, from which a vague idea of its value might possibly be obtained, there was none at all with reference to the physical condition or the actual as distinguished from the speculative value of the Anaconda stock.

See *Mason v. Pewabic Mining Co.*, 133 U. S. 50, 58.
Geddes v. Anaconda Copper Mining Co., 222
Fed. 129.

(3) The Parrot corporation was thereby automatically dissolved.

(4) The complainants were forced either to accept the arbitrary estimate, dictated or suggested by a directorate interlocking with that of the vendee, of the value of their interest in the Parrot Company, which was to be paid, not in money, but in stock of the Anaconda Company, or to apply for an appraisal, possibly involving years of litigation and, whether they were or were not ultimately reimbursed, a considerable initial expense, before a tribunal which was clothed with no authority to give them an opportunity to raise and attempt to prove their contentions that the transfer was unfair, that it had been preceded by an unlawful depletion of the assets of the Parrot Company in anticipation of such transfer, and that the proper date as of which the real value of their stock should be determined was a date earlier than that prescribed by the statute and before the property had been so depleted.

The only basis upon which, under Section 4411, the assets of the Parrot Company could be appraised was the value of the property actually belonging to it on a date fixed by the statute, namely, the date of the complainants' dissent from the action of the majority authorizing the transfer.

While it may be conceded for the purposes of this argument that, under certain conditions, as applied to some shareholders whose stock is taken, these statutes do not withhold due process of law, it seems to us clear that these complainants are, in the language of the court in *Plymouth Coal Company v. Pennsylvania* (232 U. S. 531, 544, 545), "within the class with respect to whom the Act is unconstitutional," and that they have shown that the alleged unconstitutional feature injures them and so operates as to deprive them of rights protected by the Federal Constitution (case last cited, pp. 544-545).

III.

SECTIONS 4409 TO 4412 INCLUSIVE OF THE REVISED CODES OF THE STATE OF MONTANA DID NOT, UNDER THE CIRCUMSTANCES AND IN THE LIGHT OF THE COMPLAINANTS' CONTENTIONS, AFFORD THEM A PLAIN, SPEEDY, AND ADEQUATE REMEDY AT LAW.

If it be true, as argued in Paragraph II., *supra*, that the appraisal proceedings prescribed by the statutes in question did not afford the complainants opportunity to present and try out their contention that the action of the majority stockholders was unfair and oppressive, and that it was the result of a prearranged plan to deplete and lessen the value of the assets of the Parrot Company in anticipation of the transfer complained of, then these statutes clearly did not give to the complainants a plain, speedy, and adequate remedy at law, even if they were not repugnant to the Fed-

eral Constitution on the ground that they withheld due process of law, and it was error in the court below to rule that they did afford such remedy.

IV.

THE FACT THAT THE COMPLAINANTS, UNDER PROTEST AND IN ORDER TO PRESERVE THEIR RIGHTS, BEGAN PROCEEDINGS UNDER SECTIONS 4409 TO 4412 OF THE REVISED CODES OF THE STATE OF MONTANA, WHICH WERE NOT PRESSED AND WERE DROPPED, DID NOT ESTOP THEM FROM SEEKING IN EQUITY TO AVOID THE TRANSFER, AND DID NOT CONSTITUTE A CONDONATION OF THE FRAUD, IF ANY, NOR AN ACQUIESCENCE IN THE TRANSFER.

(Assignments 6 and 7, p. 10, *supra*.)

The only evidence of the circumstances under which the appraisal proceedings under the statute were begun is to be found in the testimony of the complainant Wall (Record, pp. 67-70), and there is nothing that he said which directly or inferentially justifies a finding by the court that either he or the complainant Foss then had anything more, at least, than a suspicion of the fraud subsequently alleged in this complaint; nor is there anything to sustain a finding that there was condonation of the fraud on the part of either of the complainants. It is perfectly plain, it seems to us, from the testimony in the case, as well as from all the circumstances, that application was made within the thirty days prescribed by statute merely to preserve and protect the rights of the complainants from any prejudice which might arise if they omitted to take this step, and to give them an opportunity to look into the situation further with a view to ascertain whether or not the facts justified them in resorting to proceedings in which they could raise their whole contention regarding the illegality or injustice of this transfer. The

conclusion of the judge below, set out specifically in Assignments of Error 6 and 7 (p. 10, *supra*), is the pivotal fact upon which his decision turned, and which, to his mind, disposed of the entire controversy. All other findings and rulings were superfluous, but were made for the purpose of determining, as he said in substance, all branches of the case. In his opinion, the complainants must be denied relief in equity mainly because of their application to the state court (Decision; Record, p. 56). Precisely what the complainants did with respect to state court proceedings appears only from the testimony of the complainant Wall (p. 69), and from certain allegations of the bill which were not denied by the answers (Complaint, §§ 20 and 21, p. 8; Answers, pp. 31 and 32, 47 and 48).

The law seems to be settled that where a party has filed a petition for relief under a statute requiring the filing of such petition within a limited time, he is not thereafter estopped by election from pursuing other appropriate remedies if he has not proceeded to judgment on his petition.

Moore v. Sanford, 151 Mass. 285, 287.

Boston & Maine Railroad v. Graham, 179 Mass. 62, 67.

It has been held, also, that the institution of suit will not be held such a decisive act as to constitute a waiver of rights which would be inconsistent with the maintenance of such suit if the action is commenced in ignorance of material facts which proffer an alternative remedy, the knowledge of which is essential to an intelligent choice of procedure.

Garret v. Farwell Co., 199 Ill. 436, 441.

Standard Oil Co. v. Hawkins, 74 Fed. 395, 398, 399.

Pekin Plow Company v. Wilson, 66 Neb. 115, 120.

In other words, as applied to the situation presented in this case, if the complainants began appraisal proceedings

under the statute as a precautionary act for the purpose of preserving their rights, and to forestall any prejudice which might result from their failure to do so within the time prescribed, it is immaterial whether or not they previously had full knowledge of the facts complained of in their bill in the present suit. The absence of any evidence that either of them had such knowledge is pointed out in Paragraph VI., *infra*.

V.

THE COMPLAINANTS, WHEN THEY BECAME STOCKHOLDERS OF THE PARROT COMPANY, DID NOT THEREBY UNQUALIFIEDLY CONSENT, AS RULED BY THE COURT BELOW, TO BE CONTROLLED BY THE PROVISIONS OF SECTIONS 4409 TO 4412 INCLUSIVE OF THE REVISED CODES OF MONTANA.

Although this legislation was enacted before the complainants or either of them had become stockholders in the Parrot Company, there are obviously two conditions under which their consent to be controlled by the provisions of these statutes cannot be inferred; (1) if the statutes are unconstitutional, either on their face, or because they did not accord to the complainants the opportunity to prove the value of their stock except as of a date which they contended would be an unfair and improper basis for the ascertainment of such value; and (2) if they should be made, as claimed in this instance, an instrument of fraud, injustice, or oppression by the directors and the majority stockholders toward the minority, including these complainants.

VI.

THERE WAS NO EVIDENCE WHICH JUSTIFIED THE COURT BELOW IN FINDING, AS IT DID, THAT WHEN THE COMPLAINANTS "BEGAN THEIR APPRAISAL ACTION THEY HAD KNOWLEDGE OF ALL THE FACTS AND FRAUDULENT ACTS ALLEGED IN THIS SUIT, IN SO FAR AS THEY ARE SUSTAINED BY PROOF, TO THE EXTENT WHICH ANY STOCKHOLDER HAS OR MAY HAVE OF CORPORATE TRANSACTIONS OPENLY ACCOMPLISHED," AND THAT THEREFORE, INFERENTIALLY, IT WAS NOT COMPETENT FOR THEM TO INSTITUTE THIS SUIT.

In discussing this proposition the initial difficulty is in understanding precisely what the learned judge below meant by the language quoted which is to be found in the decision near the bottom of page 56 of the Record. If he meant to say that there had been fraud and that the complainants had actual knowledge of it when the appraisal proceedings were begun, these facts are immaterial under the authorities cited and for the reasons urged in Paragraph IV., *supra*. If he meant either that all the stockholders of every corporation are bound to familiarize themselves with every act of its officers and directors, and with all corporate transactions, or that they must be deemed in law to have knowledge of all such acts, fraudulent or otherwise, merely because they are stockholders,—the proposition seems hardly tenable. If he meant that one who owns stock in a corporation is bound to keep in such intimate touch with its affairs as to know all that is done in its name by those administering its affairs, and to instinctively appreciate whether or not such acts are unlawful, fraudulent, or unfair to him, the assertion seems equally unjustifiable.

But all this is immaterial, we respectfully submit, because, upon a most minute inspection of the Record from cover to cover, not a particle of evidence is revealed which tends to show that either Mr. Wall or Mr. Foss knew of

the commission of the acts of which they complain in their bill in this suit, or that they knew that such acts were unlawful, fraudulent, or unfair, or that they were possessed of information which justified them in alleging such to be their belief at the time when the appraisal proceedings were begun.

RECAPITULATION

AND ADDITIONAL FACTS.

The Parrot Company was chartered in 1880 (p. 194). The statutes of Montana, the constitutionality of which is here questioned, were enacted in 1899 (pp. 7, bottom; 29, 46). Early in the latter year, Mr. Henry H. Rogers and his associates completed the acquisition of a majority of the stock of the two defendant corporations (pp. 61 and 62). Whether or not there was any connection between the purchase of this stock by these gentlemen and the procuring of the legislation in question, if of any consequence, must be left to conjecture. The statutes vest extraordinary powers in the directors and majority stockholders of mining corporations. As observed by the learned judge below in his decision (p. 56), they "vest power, unknown at common law, in holders of two-thirds of the issued stock of any Montana mining corporation, for any reason, at any time, to any one, at any price, for any consideration, to sell all corporate property inclusive of choses in action and dissolve the corporation."

The complainants first acquired stock in the company, Mr. Wall in 1902, and Mr. Foss in 1907. The history of the corporation between these two years is marked with every appearance of prosperity. Very considerable amounts of ore were mined and smelted, the construction of a new and extensive plant was begun and nearly completed in Jefferson (Gaylord), near Butte, at an expense of about seven hundred and fifty thousand dollars (pp. 74, 75, 85), and substantial dividends were paid. During the period succeeding 1907, down to the date of the transfer com-

plained of, a refining plant owned by the Parrot Company at Bridgeport, Connecticut, which had been in successful operation for many years, was closed down and sold, work on the Gaylord smelter, above referred to, was discontinued, the building, then nearly completed, was dismantled, and the property disposed of for a comparatively small sum (p. 139). Other assets of the corporation of considerable value were conveyed away. The smelting of the Parrot ore was turned over to the Anaconda.

In May, 1910, a transfer of all the remaining property of the Parrot Company, recommended by the Board of Directors, some of whom were also directors of the Anaconda Company, was approved by more than two-thirds of the stockholders of the Parrot Company, in which, as well as in the Anaconda, the Amalgamated, controlled by the Rogers syndicate, owned a majority interest. These complainants voted against the transfer, and, being advised that they must apply to the Montana courts under the statutes for an appraisal of their stock, made application for such appraisal, protesting at the time that they should not be compelled to do so for the reason, among others, that these statutes did not accord them that due process of law involving just compensation which was secured to them by the Federal Constitution. The statutory proceedings were, however, not pressed, and were discontinued before any hearing was had thereunder, and this bill in equity was filed in the District Court of the United States for the District of Montana on January 9, 1911.

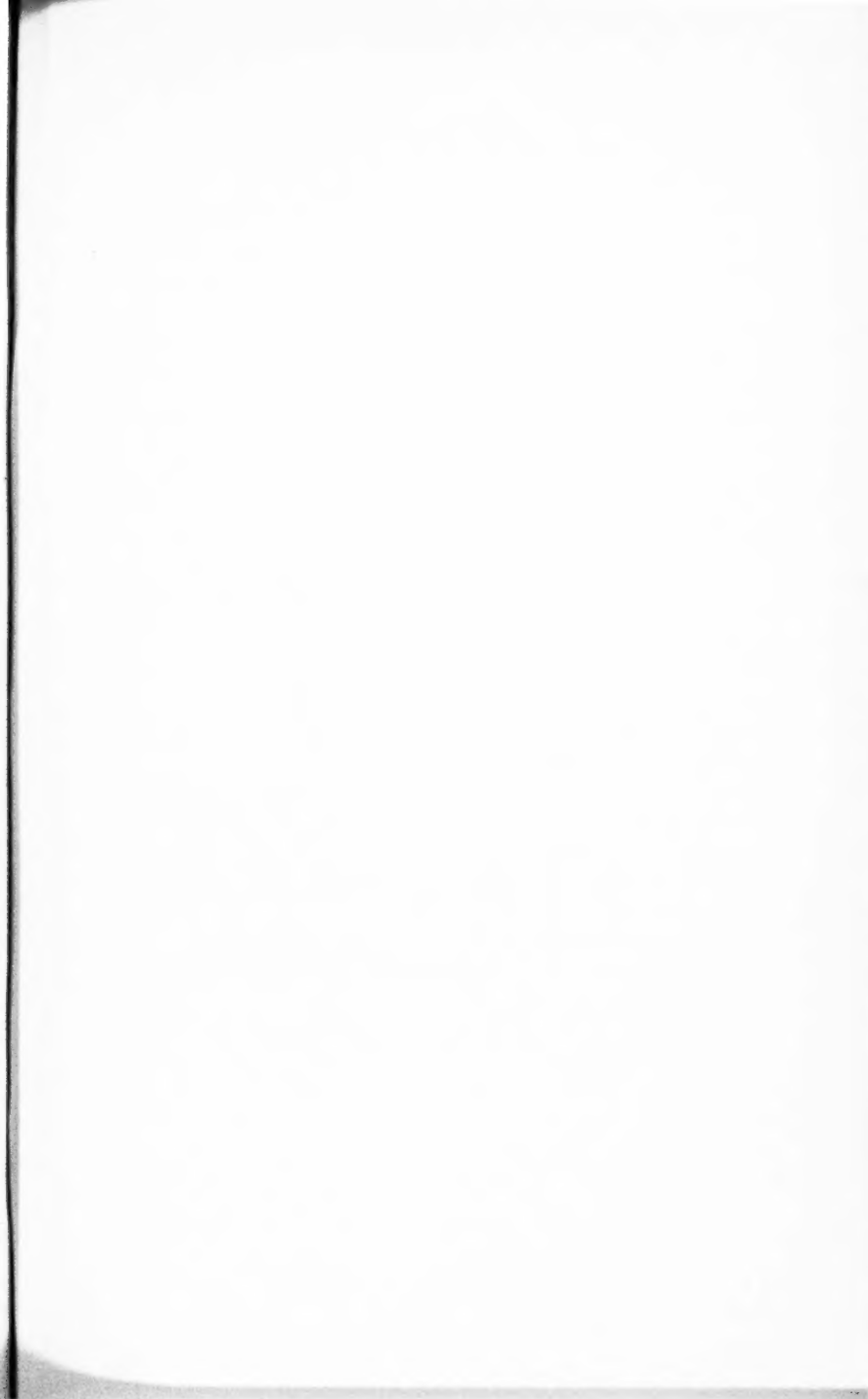
At the time of the taking of the testimony in this suit, most of which unavoidably came from hostile witnesses, the Amalgamated Company owned all the stock of the Parrot Company with the exception of about 7,500 shares, 1,210 of which are owned by the complainants (p. 88, bottom). None was ever taken in the name of the Anaconda Company (p. 67).

The complainants claimed that, as the result of a fraudulent plan or conspiracy by some of the gentlemen in control

of the three corporations, the Parrot, the Anaconda, and the Amalgamated, there had been a depletion of the assets of the Parrot in anticipation of this transfer, and they protested that the proceedings for appraisal under Section 4411 of the Revised Codes of Montana did not accord to them due process of law secured to them by the Federal Constitution, in that they did not afford them an opportunity to present their full claim and obtain just compensation. The court below did not pass specifically upon the constitutional question, but ruled primarily that the fact that the complainants had begun proceedings under the appraisal statute estopped them from bringing this bill in equity (p. 56). Incidentally, the court ruled, also, that these statutes afforded the complainants a plain, speedy, and adequate remedy at law, and, inferentially, that they could not go into equity for the purpose of proving the fraud which they alleged to have existed, or to contest the constitutionality of the Montana statutes.

The determination of the constitutional question presented by this appeal depends upon whether or not the statutes of Montana, while compelling the complainants either to give up their stock for stock in another corporation or to litigate to obtain its money equivalent, furnished them with an instrumentality whereby they could present to a tribunal, clothed with power to decide it, their claim that an appraisal as of the date of their dissent from the action of the majority authorizing the transfer complained of, was not, under all the circumstances, a fair basis upon which to ascertain the value of their stock. The court below ruled, in effect, that by beginning appraisal proceedings, they were estopped from raising this question. The decree dismissing the bill was based upon that ruling, which, we respectfully submit, was plain and prejudicial error.

ASA P. FRENCH,
FRANCIS P. GARLAND,
Solicitors for Appellants.





Office Supreme Court, U. S.

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JAMES D. MAHER

CLERK

Supreme Court of the United States.

OCTOBER TERM, 1916.

No. 271.

WILLIAM E. WALL, and ETTA FOSS, Executrix of the Will
of Louis Foss, deceased,

Appellants,
against

PARROT SILVER AND COPPER COMPANY and ANACONDA
COPPER MINING COMPANY,

Appellees.

BRIEF FOR APPELLEES.

JOHN A. GARVER,
of New York City,

L. O. EVANS,
of Butte, Montana,
Counsel for Appellees.



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Supreme Court of the United States,

OCTOBER TERM 1916.

No. 271.

WILLIAM E. WALL, and ETTA FOSS,
Executrix of the Will of Louis
Foss, deceased,

Appellants,

AGAINST

PARROT SILVER AND COPPER COM-
PANY and ANACONDA COPPER
MINING COMPANY,

Appellees.

Brief for Appellees.

NOTE :—At the time of the preparation of this brief (April, 1917), the brief for the appellants had not been received, although the appeal was taken in August, 1915.

The references to the record are to the top, or "print," paging.

Statement.

Appeal by the complainants below from a final decree of the United States District Court of Montana, dismissing the bill of complaint upon the merits (59).

The suit was instituted in January, 1911 (p. 1), by the appellants, as stockholders of the Parrot Silver and Copper Com-

pany, a Montana mining corporation, on behalf of that Company, against the Anaconda Copper Mining Company, also a Montana mining corporation, to set aside, on the ground of fraud, a sale of all the property of the Parrot Company made to the Anaconda Company in May, 1910 (181-8). All charges of fraud were denied in the answers.

The consideration for the sale was 90,000 shares of the stock of the Anaconda Company, having, at the time, a market value of about \$50 a share (149), or about \$4,500,000. The total authorized capital stock of the Parrot Company was \$2,300,000, consisting of 230,000 shares, of the par value of \$10, of which 229,850 shares were outstanding (214). The consideration received for the property was thus nearly twice the par value of the Parrot stock.

The complainants had only 1,210 shares of Parrot stock, representing about one-half of one per cent. of the entire capital (p. 1). They acquired their stock in 1900 and 1908 (p. 1).

The Parrot Company was organized in 1880, for a period of twenty years (194). In 1897, its corporate existence was extended for an additional twenty years (197).

The sale complained of was made in strict compliance with the provisions of the Montana statutes, which permit a mining corporation to dispose of all of its property to another mining corporation, for capital stock, if such sale is duly approved at a special stockholders' meeting called for the purpose, by a vote of holders of at least two-thirds in amount of the outstanding stock.

Revised Code of Montana, Secs. 4409-12.

(These Sections are printed in full in the Record ; pp. 190-2).

The sale to the Anaconda Company was approved by the holders of 167,382 shares (of which the Amalgamated Copper Company owned 115,719 shares), constituting more than two-

thirds of the outstanding stock ; and only 3,575 shares, including those of the complainants, voted in opposition to the sale (179). In other words, shares representing nearly three-fourths of the entire capital stock voted in favor of the sale, while shares representing only about 11½% opposed the sale.

The statutes of Montana (Secs. 4411-12 ; Record, pp. 193-4) permit a non-assenting stockholder to institute a proceeding for the purpose of having his stock appraised and compelling its purchase at the appraised price by the corporation. Appraisers are appointed, upon whose award judgment may be entered ; and such judgment forms a lien upon the real property sold. The entire expense of the proceeding is thrown upon the corporation (Sec. 4411 ; p. 193).

The appellants instituted proceedings for the appraisal of their stock (8) and, after doing so, and while the proceeding was still pending, they commenced the present suit to set aside the sale on the ground of fraud. The fraud charged was a conspiracy on the part of certain individuals alleged to have acquired control of the Parrot and Anaconda Companies, to dissipate the assets of the Parrot Company and acquire what remained, through the Anaconda Company, for less than their actual value.

No evidence was given by the complainants in support of their charge of fraud ; and the District Judge, in his decision, characterized the allegations in the bill to that effect as "reckless and in part to the point of willful falsehood" (58).

The entire fairness of all the transactions complained of in the bill was affirmatively shown by the defendants, with the utmost circumstantiality and detail. The complete failure of the complainants to give any evidence of fraud or wrongdoing will be referred to at greater length hereafter (*post*, p. 10).

The Court below not only found that there was no fraud in connection with the operation of the Parrot Company or in connection with the sale of its assets to the Anaconda Company, but also that the appellants, by instituting the appraisal

proceedings, had made an election of remedies which prevented their maintaining the present suit, and that the complainants had an adequate remedy at law in the appraisal proceedings (58).

As already stated, by the final decree, the bill of complaint was dismissed upon the merits (59).

The constitutional question attempted to be raised by the assignments of error is that the statutes of Montana, which provide for the sale of all of the assets of a corporation upon the assent of two-thirds in amount of the stockholders, and for the appraisal and purchase of the stock of the non-assenting stockholders, are repugnant to the Fourteenth Amendment of the Federal Constitution (Assignments 1, 2, 3, 4, 5, and 13 ; pp. 215-7.

The appellants also charge, as error, the finding of the Court that the institution of the appraisal proceedings constituted an election between inconsistent remedies (Assignments 6 and 7, p. 216), and that the appraisal proceedings afforded an adequate remedy at law (Assignment 10).

P O I N T S .

FIRST.

No constitutional question raised in the Court below.

I. To give the appellants a standing in this Court to raise the constitutional question, it must appear that it was urged and decided adversely to their contention in the Court below.

Cincinnati, etc., Ry. Co. v. Thiebaud, 177 U. S.,
615, 619-20.

It is not sufficient that the constitutional question is asserted in the bill of complaint.

Newburyport Water Co. v. Newburyport, 193 U. S.,
561, 576;

Goodrich v. Ferris, 214 U. S., 71.

II. As a matter of fact, no constitutional question was raised even in the bill of complaint. Article 20 (p. 8), is the only Article in which any attempt was made to raise the question. The pleader may have had it in mind to aver that the Montana statutes were in contravention of the Federal Constitution; but he does not say so. All that is averred is that "whereas" the plaintiff was informed that he should file a petition for the appraisal of his stock under the Montana statute and did do so, protesting that the statute was unconstitutional in impairing the obligation of the plaintiffs' contract and depriving him of his property—; and there the pleader stops, without finishing his sentence.

III. On the hearing, the Montana statutes were not attacked on either of the grounds referred to in Article 20 of the bill. The only ground upon which they were in any way questioned was that the alleged conspirators mentioned in the bill, after having misappropriated some of the assets of the

Company, wrongfully availed themselves of these statutory provisions for the purpose of selling the assets remaining to the Anaconda Company, for less than their fair value.

That this was the *only* point urged upon the Court below is expressly stipulated in the record (204) :

“ During the progress of said case in said District Court, the only contention asserted by counsel for complainants as to the constitutionality of any statute of the State of Montana in connection with the matters complained of in this action was as set forth in the following portion of the brief of said appellants submitted to the Court upon the final hearing.”

Here follows an argument, in which it is attempted to show that the consideration for the sale of the property was inadequate and that this was largely brought about by the previous alleged dissipation of the assets of the Parrot Company ; and, in stating his conclusion from his argument, counsel said (205) :

“ We contend that, under all these circumstances and conditions, that the Statute of Montana could not be invoked to perpetrate or cover up a fraud, and that a sale could not be so conducted that even the law could be made an instrument of fraud.

“ We also say that, if these complainants were compelled to accept their proportion of the Anaconda stock or submit to the appraisal provided for in the Statute, *under this state of facts*, that it would be the taking of their property without due process of law and without just compensation, which would be in violation of the Fifth Amendment of the Constitution, that

“ ‘ No person shall be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation.’ ”

It will be seen that this contention is based, not on Article 20 of the bill, in which a protest against the validity of the

Montana statutes is said to have been made in the appraisal proceedings, but on Article 21 of the bill, where the complainants allege that even if the Montana statutes are *not* in contravention of the Constitution, yet, as the property of the Company had, prior to the sale, been wrongfully depleted by the alleged conspirators, the complainants would be unable to show, under the appraisal statutes, what the value of the stock was.

That, however, is not to prove that the statutes themselves are repugnant to the Constitution, but that wrongdoers might avail themselves of the statutory provisions to perpetrate a fraud.

The Court below found that the assets had not been dissipated (57). Even, however, if they had been dissipated, it would have made no difference. The mere fact that a corporation has been wrongfully deprived of some of its property does not prevent a dissenting stockholder, under these statutes, from obtaining an award for his stock based on all the corporate assets, including any claim for impairment or waste against the directors or others conspiring to obtain the assets wrongfully.

IV. It is thus evident that the Court below was not even asked to consider whether any statute of Montana was in contravention of the Constitution of the United States.

SECOND.

Constitutional objection waived.

Even if there were any substantial ground for objecting to the constitutionality of the Montana statutes, the appellants waived it in instituting proceedings under those statutes for

the appraisal of their stock. By that proceeding, they necessarily asserted the validity of the statutes. One may waive his constitutional rights, and, having done so, he cannot subsequently contend that they have been violated.

Great Falls Mfg. Co. v. Attorney General, 124 U. S., 581 ;

Electric Co. v. Dow, 166 U. S., 489 ;

Pierce v. Somerset Ry., 171 U. S., 641 ;

Leonard v. Vicksburg R. R. Co., 198 U. S., 416, 422 ;

In the Great Falls Manufacturing case, the Government had taken, for public purposes, certain property belonging to the Manufacturing Company. That Company had the right, under the statute, to bring an action in the Court of Claims to have the value of its property so taken determined and to recover judgment therefor, or it had the right, in the first instance, to bring its action in court to avoid the transaction on constitutional grounds. It elected to bring the action under the statute in the Court of Claims ; and this Court held that by so doing, it had estopped itself from the remedy which it afterwards sought by direct suit. In the course of its opinion, this Court said (p. 599) :

“ The plaintiff, by adopting that mode, has assented to the taking of its property by the Government for public use, and has agreed to submit the determination of the question of compensation to the tribunal named by Congress. By the very act of suing in the Court of Claims, under the statute of 1882, it has not only waived the right, if such right it had, to compensation in advance of the taking of its property, but the right, if such it had, to demand that the amount of compensation be determined by a jury. By the same act, it has estopped itself from suggesting that no judgment obtained in the Court of Claims can be enforced against the United States, but must await an appropriation for its payment.”

The mere commencement of the action in that case was held to preclude the plaintiff from subsequently questioning the constitutionality of the statute.

In *Pierce v. Somerset Railway*, the Court said (p. 648) :

“ A person may by his acts or omissions to act waive a right which he might otherwise have under the Constitution of the United States, as well as under a statute, and the question whether he has or has not lost such right by his failure to act or by his action is not a Federal question.”

THIRD.

The case was decided on its merits, entirely independent of the Montana statutes.

I. In holding that the complainants had entirely failed to sustain their charges of fraud by any evidence, the District Court decided the case broadly upon its merits; and the bill was dismissed accordingly (59).

II. The appellants have not questioned this finding by the specification of any error. The assignments of error (216-17), that the Court erred in dismissing the bill and in not granting the complainant relief, did not comply with the requirements of Rule XXXV of this Court, and are too vague and general to be availing.

Deering Harvester Co. v. Kelly, 103 Fed., 261 ;
Smith v. Hopkins, 120 Fed., 921 ;
Flickinger v. First National Bank, 145 Fed., 162 ;
Craig v. Dorr, 145 Fed., 307, 311 ;
Mast & Co. v. Superior Drill Co., 154 Fed., 45 ;
The Myrtle M. Ross, 160 Fed., 19, 22 ;

III. The decision of the District Court, holding that the Parrot property had not been improperly managed or dissipated, and that the sale to the Anaconda Company was fair and valid, was overwhelmingly sustained by the evidence.

Because the Amalgamated Copper Company owned a majority of the capital stock of both the Parrot and Anaconda Companies, and because some of the directors and officers of the Amalgamated Company were also directors and officers of the Parrot Company, the appellants urged in the Court below that this was evidence of fraud in the management of the Parrot Company and in the sale of its assets. There was no motive, however, for committing a fraud, because the ownership of stock by the Amalgamated Company in the Parrot and Anaconda Companies was in exactly the same proportion, namely, 51 per cent. (90-2). Owing, however, to the imputations and charges contained in the bill of complaint, the defendants were at great pains to show affirmatively and positively and beyond any possible question, that the operation of the Parrot properties under their management had been conducted solely in the interest of the Parrot Company (84, 86, 60, 100-1, 108, 119), and that the sale of its properties was made in the most open manner, for an ample consideration, after an examination and appraisal by disinterested experts and the verification of their report and recommendation by the officers of the Company.

As there was no evidence of fraud given by the complainants, it will not be necessary, for the purpose of showing the absolute correctness of the decision of the District Court, to analyze the evidence in any great detail, but merely to refer to the principal charges of misconduct contained in the bill.

1. The alleged wrongful closing of the Bridgeport refinery.

It is alleged in the bill (Article 6, p. 3), that this refinery was wrongfully closed and sold.

In 1899, when the Amalgamated Company acquired a bare majority of the stock of the Parrot Company, the refinery at Bridgeport had become practically useless. It was small and antiquated, having been erected when the art was still in its infancy ; and it was incapable of competing with the large modern refineries (66, 131). The new management, accordingly, made a contract, first, with an independent refinery, at Baltimore, and afterwards with the Raritan Copper Company, by which the Parrot copper was refined on the same basis as the large quantities produced by the Anaconda and other Companies, with the result of a large saving to the Parrot Company (88-91).

2. The abandonment of the partially constructed smelter at Gaylord.

In 1894, about five years before the change in the management of the Parrot Company, it had commenced the construction of a smelting plant at Gaylord, Montana, thirty-nine miles distant from the Parrot mines at Butte. To reach Gaylord from Butte, the main range of the Rocky Mountains had to be crossed, involving a heavy transportation charge, over a very heavy railroad grade. The Company had expended about \$700,000 on this plant, which was much larger than was required for the treatment of its own ores ; and it was not so situated as to secure the treatments of ores of other producers. About \$700,000 additional would have been required to complete the plant. Even under the former management, the work of construction had stopped, and the entire plan had virtually been abandoned as impracticable. The new management made a further investigation of the subject, and concluded that it would be unwise to attempt to complete the plant. Transportation of the ores would have cost 75c. a ton, as against 15c. to the large and

efficient plant at Anaconda, only twenty-six miles distant, on the same side of the mountain. The operation of the proposed plant would have resulted in litigation on the part of the farmers for injury to their crops, resulting from smelter fumes; and the venture would undoubtedly have resulted in very heavy loss. The property was accordingly disposed of to the best advantage possible; and whatever loss was sustained was the result of the action of the former management (85, 90, 101, 108, 115-17, 129, 132, 138-9).

3. The Parrot Company had an old smelter at Butte; and it was because that plant was so inadequate and had become practically obsolete with the advances in metallurgy and smelting, that the new plant at Gaylord had been projected by the old management. In addition, its dumping ground for tailings and slags had become inadequate and its water supply insufficient. The transportation of the ores from the Parrot mines to this old smelter cost about 25c. a ton. An arrangement was made to have the ore smelted at the fine modern plant at Anaconda, which the Anaconda Company held under a lease. The Parrot ore was transported to that plant, at a cost of 15c. a ton, a saving of nearly one-half, and the smelting charges were also greatly reduced; so that the net saving to the Parrot Company was at least \$1.50 a ton, or more than \$800 a day (86, 88, 90-1, 101-2, 115, 117, 123, 132-4).

4. One of the charges made in the bill which doubtless tended to provoke the Court below into characterizing the allegations of the bill as "reckless and in part to the point of willful falsehood," is that contained in Article 15 (6-7), that the alleged individual conspirators had caused the Parrot Company, at various times between 1900 and 1910, to convey surreptitiously and fraudulently valuable

mining properties and large ore bodies, without consideration, to the Anaconda Company. Some of these properties are specifically described in the bill.

Not only was no proof whatever attempted to be given in support of these reckless averments, but it was shown, without contradiction, that no conveyance whatever had been made of *any* property by the Parrot Company to the Anaconda Company prior to the sale of 1910, and that as to some of the properties specifically described, the Parrot Company never had or asserted any ownership in them (140).

5. Equally reckless and unfounded charges were made in Articles 12 and 13 of the bill (5-6), in which it is alleged that the sales of Parrot property were fraudulently made to persons therein named, the proceeds of which, to the value of \$400,000 or more, were never received by the Parrot Company. The complainants did not attempt to produce a particle of evidence in support of these monstrous charges, as no such conveyances had ever been made.

Other charges of fraud in connection with the management of the Parrot properties were so completely unsupported by any evidence that it is not worth while to attempt any analysis of them.

Thus, it was charged in Article 10 and Article 16 of the bill, that the shafts of the Parrot mine were closed and its ores abstracted by the Anaconda and other affiliated companies. The shafts were never closed, except for the purpose of making repairs; and not a particle of ore was ever unlawfully taken by the Anaconda or any other company (83-5, 101, 139, 140).

The Blue Vein Lode, referred to in Article 11 of the bill (5), was not conveyed without consideration to the Red Metal Company, as alleged. There was a perfectly fair adjustment between the two Companies of a diffi-

cult question of title. This adjustment was advantageous to the Parrot Company and was duly approved by its stockholders (140, 142).

The writing down of the amount standing to the credit of surplus account on the books of the Parrot Company was rendered necessary, because the former management had not made proper depreciation charges, but had carried all its properties at cost, and the various properties which had been duly disposed of produced much less than their book values (106, 108, 130).

6. In Article 22 of the bill (9), it is charged that some of the books of the Parrot Company were falsified, and that the complainants were not permitted to see other books and accounts showing the true value of the assets of the Company.

The evidence is full and uncontradicted, not only that complete and correct books and records were kept by the Company, but that they were at all times open and accessible to the complainants and all other stockholders of the Company (96, 105-6, 130-1, 141, 147). That the complainant Wall was given free access to the books and records was proved by his own testimony (68-9).

V. That the sale of the Parrot property to the Anaconda Company, in 1910, was made with the utmost fairness to the Parrot Company may be inferred from the fact that stockholders representing only $1\frac{1}{2}\%$ of the capital stock opposed the sale, while those representing nearly three-fourths of the stock voted in favor of it.

The mining properties of the Parrot Company had been worked for many years, and, by 1910, were largely exhausted. The Company had run into debt to the extent of \$250,000, and was in no condition to carry on the

extensive work which was essential to the development of new ore bodies (92-3, 114-15, 118-19, 121, 123-4, 128, 135-7). The problem facing the Parrot Company was also encountered by other companies operating in the Butte district. It was apparent to the management of these companies that it was to their interest, if possible, to sell their properties to the Anaconda Company, which already controlled a large portion of the Butte territory and which had ample resources for developing and operating the properties economically. Not only could the development work be conducted at largely reduced expense by the owner of all the adjacent connecting properties, but the general operating expenses could be enormously reduced by the elimination of separate surface plants and the useless duplication of work and expense in pumping and rehandling the water encountered in the underground workings. A union of these properties would also put an end to the serious controversies and costly litigation over the titles to the ore veins at the increasing depths, resulting from faults and other geological conditions which developed as the workings reached lower levels. Accordingly, in the early part of the year 1910, a proposition was made by the Anaconda Copper Mining Company to purchase the property and assets of the several corporations which operated neighboring and adjoining properties. The proposition to the Parrot Company was to purchase all of its property and assets for 90,000 shares of the capital of the Anaconda Company, of a then market value of approximately \$50 a share (149). A careful examination and appraisal of the properties, the purchase of which was contemplated, including the properties of the Parrot Company, was caused to be made by a Commission consisting of Mr. James F. Kemp, of Columbia University, a well known and highly esteemed geologist and engineer, Mr. Frank Klepetko, mining engineer and metallurgist, who was not then employed by any of the corporations interested but who in former years had been general manager of the Boston and Montana Con-

solidated Copper and Silver Mining Company and was familiar with the Butte District, and Mr. Herman Keller, geologist and mining engineer, who had, in the very early years of its existence, been connected as such engineer, geologist and metallurgist, with the Parrot Company. This Commission carefully examined and appraised the properties and approved the basis for the sale on which the proposition of the Anaconda Copper Mining Company was based, including a finding that the consideration to be given was fair and just; and the evidence in support of this conclusion is overwhelming (91-3, 94-6, 100-102, 114-15, 119, 135-7, 140-2, 146-7).

The officers of the Company made an independent investigation of the properties before recommending an offer of purchase to the stockholders (109-115, 207-215); and a subsequent meeting of the stockholders was duly held at which, as heretofore stated, the sale was authorized by a vote of more than two-thirds of the outstanding stock, while only eight stockholders, holding 3,575 shares, opposed the sale. Aside from the stock held by the Amalgamated Company, there were approximately 480 stockholders holding more than 50,000 shares, who voted in favor of the sale (162, 166, 168-179).

FOURTH.

The sale also valid on other grounds, independent of the Montana statutes.

While, ordinarily, at common law, a corporation which is conducting a successful business cannot dispose of all of its property without the consent of all of its stockholders, yet this principle does not apply to a non-going corporation, which is not conducting a profitable business and is not in a situa-

tion to carry out the purpose of its creation ; and the principle has no application to such a case as the one at bar, that of a mining corporation with a large indebtedness, and the property of which had been worked for many years and was largely exhausted, and the principle also has no application to the present case, because the charter of the Parrot Company expressly authorized the sale.

I. Nothing is more certain than that the extraction of ores from a mine will, in course of time, exhaust the mine and reduce its value. The Parrot property was one of the oldest in the Butte district. It had been worked since 1880 ; and it would have been strange, indeed, if the mines had not been largely exhausted during the thirty years that elapsed between 1880 and 1910.

The evidence is undisputed, that, for several years prior to the sale, the ore bodies of the company had become lean and of low grade, and the mining operations had been conducted at a loss (209). The company had fallen into debt to the extent of \$250,000, and was without the means of obtaining funds to prosecute the necessary development work for the continued operations of its properties. Under such conditions, the directors may, with the consent of only a majority of the stockholders, dispose of all the company's property and assets.

Thompson on Corporations (2nd Ed.), Secs. 2424, 2429 ;

Miners Ditch Co. v. Zellerbach, 37 Cal., 543 ;

Treadwell v. Salisbury Mfg. Co., 7 Gray, 393 ;

Traer v. Prospecting Co., 124, Ia., 107 ;

Bowditch v. Jackson Co., 76 N. H., 351 ;

Sewell v. East Cape May Beach Co., N. J. Eq., 717 ;

Peabody v. Westerly Waterworks Co., 20 R. I., 176 ;

Hayden v. Official Red Book & Directory Co., 42 Fed., 875 ;

Tanner v. Lindell Ry. Co., 180 Mo., 1.

II. The fact that the consideration received for the sale was capital stock of the Anaconda Company is of no consequence. The Parrot Company had full power, under its charter, "to acquire, hold, sell and deal in shares of stock, bonds and securities of other incorporated companies" (202). Its charter authority to acquire the Anaconda stock was, therefore, just as broad and extensive as its power to acquire and operate its mining properties. Such stockholding right was recognized by the Montana statutes (Sections 4409 to 4412 of the Revised Code); and this Act, adopted in 1899, has been so construed by the Supreme Court of Montana.

MacGinniss v. Boston & Montana Co., 29 Montana, 428, 458.

Such stockholding right was also expressly given by Act of the Eleventh Legislative Session, found at page 150 of the Session Laws, Section 4.

Irrespective of any statutory or charter authority, the Parrot Company has ample power to transfer its property for stock of another corporation.

Thompson on Corporations, Sections 4064, 8356.

II. The Parrot Company, irrespective of the statute, had full power under its charter provisions to make the sale in question without the consent of all of its stockholders. Under its amended charter of 1897 (201-2), which antedated the acquisition of any stock by the appellants (p. 1), the powers of the Company were much enlarged, and it was expressly authorized by the amended charter (202) "to acquire, hold, sell and deal in real estate, personal property and merchandise in Montana and elsewhere." Under similar charter provisions, it has been repeatedly held that probably without the consent of any of the stockholders, but beyond question, with the consent of a majority, the directors of the Parrot Company could have disposed of all of its property; and under the decisions hereinbefore cited, its right was clear to

make such sale for the capital stock of another company, especially when that stock had a market value representing about twice the par value of the Parrot stock (149).

Pitcher v. Lone Pine Consolidated Mining Co., 81 Pacific, 1047 ;

Lang v. Reservation Mining & Smelting Co., 93 Pacific, 208 ;

Traer v. Prospecting Co., 124 Iowa, 107 ; 99 N. W., 290 ;

Maben v. Gulf Coal & Coke Co., 56 Southern, 607.

FIFTH.

The question of estoppel.

I. The lower Court found (56, 57) that, with as full knowledge of the facts as they had at the time of the commencement of this action, the complainants freely and voluntarily sought their remedy in the District Court of Montana, by commencing a proceeding for the appraisal of the value of their stock. The complaint alleged (Article 20, p. 8) the commencement of the proceeding, though, as the complainant Wall testified, it was not pressed to a hearing (69). It is, however, still pending.

The evidence uncontradictedly shows that full records of all transactions complained of were kept upon the Parrot books and records, open and accessible to complainants and other stockholders at all times (96, 105-6, 130-1, 141, 147).

There is no evidence to show that there was any discovery of new facts by complainants between the time of bringing the appraisal proceedings and the time of taking the testimony in the present action ; so that the Court's finding, that, at the time complainants began their appraisal action, they had knowledge of all the alleged fraudulent acts referred to in the bill, in so far as they are sustained by any proof, is not open to question.

SIXTH.

The decision being justified on other grounds, the constitutional question is immaterial.

In view of the decision on the merits, and on the ground of waiver and estoppel, any ground for the decision, based on the statutes of Montana, becomes entirely immaterial; and the appellants are in no position to contend that they have been deprived of constitutional rights by the Montana statutes, when those statutes did not in any way control the decision. This Court has repeatedly held that to give it jurisdiction to hear an appeal direct from the decision of the District Court, there must not only have been properly raised in, and decided by, the lower court, a question involving a right under the federal Constitution, but such constitutional question must have been the controlling one in the decision.

Carey v. Houston R. Co., 150 U. S., 170, 181 ;

Eustis v. Bolles, 150 U. S., 361 ;

Giles v. Leasley, 193 U. S., 146, 160 ;

Cosmopolitan Mfg. Co. v. Walsh, 193 U. S., 460.

Upon appeals from the decisions of State courts, where the principle involved is the same as that which is involved on a direct appeal to this Court from the District Court, the rule has been laid down that the State court's decision upon the federal or constitutional question must not alone have been necessarily involved, but that the decision of the entire cause must have turned upon the determination of such question, and that if the record disclosed other matters or questions which would have been decisive of the case, without reference to the federal question, this Court would have no jurisdiction upon direct appeal.

Waters-Pierce Oil Co. v. Texas, 212 U. S., 86.

In the case at bar, not only did the lower Court make specific findings upon other than federal questions, which in

themselves were decisive of the case, but, as pointed out in the preceding Points, the present record shows that the action of the lower Court in confirming the sale in question was fully justified on other grounds, quite independent of the Montana statutes.

Irrespective of the correctness of the Court's decision upon the question of estoppel, its determination of that question against complainants was a decision of this case independent of any federal or constitutional question involved, and is, therefore, decisive of the jurisdiction of this Court.

The question of jurisdiction in this Court is not dependent upon the question whether the lower Court correctly decided that the sale of the property was properly and fairly made, or that the complainants were estopped from asserting any constitutional or other objection to the sale; but as the lower Court did so decide, there is no jurisdiction of this appeal, because such decision of the lower Court was not based upon any question of federal law or federal constitution. In other words, in deciding that complainants were estopped from avoiding the sale, the lower Court based its decision upon the merits and upon the general rules of estoppel; and there was not involved in that decision any question arising under the laws or constitution of the United States.

Eustis v. Bolles, 150 U. S., 361.

Leonard v. Vicksburg R. R. Co., 198 U. S., 416 ;

Speed v. McCarthy, 181 U. S., 269 ;

Gillis v. Stanchfield, 159 U. S., 658 ;

SEVENTH.

The Montana statutes in all respects valid.

Even if the decision of the District Court had rested solely upon the validity of the Montana statutes, it would have been

thoroughly justified ; because, there is no doubt that these statutes do not contravene the Federal Constitution.

I. It is difficult to understand how the validity of a statute such as the Montana statute, even if it did not contain the provision for securing to plaintiffs the value of their stock by appraisal proceedings, can be challenged ; and certainly a stockholder purchasing stock in a corporation having such corporate powers is in no position to assert that he has been deprived of anything without due process of law.

The Supreme Court of Montana has held that the statutes in question are not in contravention of the provisions of the Montana Constitution, forbidding the impairment of contracts and the taking of property without due process of law.

Allen v. Ajax Mining Co., 30 Montana, 490 ;
Somerville v. St. Louis Co., 46 Montana, 268.

An exactly similar statute, as applied to a corporation previously formed, was upheld by the Supreme Court of Appeals of West Virginia.

Germer v. Triple State Natural Gas Co., 54 South-eastern, 509.

Statutes authorizing the sale of all the corporate assets of the corporation, upon the consent of some portion of the stockholders, have long existed in a number of states ; and statutes permitting consolidation or dissolution with the consent of less than the entire number of stockholders are still more common. Usually, there are contained in such statutes provisions for the appraisal and compulsory purchase of the shares of dissenting stockholders, similar to those contained in these Montana statutes. There has apparently never been a decision of any court holding that such statutes are invalid.

If the dissenting stockholder is not satisfied upon dissolution and distribution of assets, to take his proportion, either

in kind or in cash, upon a sale of the assets, the appraisal proceedings provided by the Montana statute certainly furnished due process of law for securing to him the value of his stock.

Kilbourn v. Thompson, 103 U. S., 168, 182 ;

Iowa Cent. R. Co. v. Iowa, 160 U. S., 389 ;

Louisville & N. R. Co. v. Schmidt, 177 U. S., 230.

The legislature has just as much right to provide that a corporation may be dissolved upon the consent of the holders of two-thirds of its capital stock as it has to fix a definite limit upon the period of corporate existence; and if it may provide for the direct dissolution of the corporation upon the consent of less than the whole number of stockholders, it may similarly provide for the indirect dissolution by the sale of all of its property and the liquidation of its assets.

Complainants' contention, that the value of the Parrot property for the purposes of the sale was an arbitrary one, fixed by an interlocking directorate, and that there was no evidence to show that the Anaconda stock was a fair equivalent for such assets, and particularly that there was no evidence of the actual value of the Anaconda stock, is absolutely and overwhelmingly disproven. The uncontradicted evidence (141, 142) showed that the value of the Anaconda stock, basing such value upon the prevailing market price of the stock, and also basing the value of such stock upon the actual value of all the property of the Anaconda Company, was at least equal to the value of the Parrot assets sold; and the Court so found. The question as to whether the Parrot Company should accept such Anaconda stock as a fair consideration for its property was not determined by any interlocking or other directorate, but was decided by the holders of much more than two-thirds of the Parrot stock. Under the Montana statute, the Board of Directors had no discretion in the matter, their duty simply being to call the meeting, and

upon the sale being directed by the requisite amount of stock, to complete the sale.

Appellants apparently think that because the result of the sale of the Parrot property is to place in the Parrot treasury stock of the Anaconda Company, some constitutional right of theirs has been invaded, because, upon dissolution, they might be compelled to accept their proportion of the Anaconda stock. But the situation, upon dissolution of the Parrot Company, is the same as that which would arise in the case of any corporation having capital stock of another corporation as part of its assets. The question of properly distributing the property of the Parrot Company, whether real estate, stock in other corporations, or other personal property, could only arise upon dissolution of the corporation; and upon such dissolution, the Anaconda stock acquired by the Parrot Company through this sale, would, unless previously converted into cash, be distributed the same as other assets, in the manner provided by law.

The appraisal proceedings provided for by the Montana statute were not obligatory upon complainants, but merely offered an additional safeguard in assuring any dissenting stockholder full value for his stock, irrespective of the sale price. But appellants seem to base their objection to such appraisal proceedings upon, first, the assumption that, at the time of the sale of the Parrot Company's property, the assets of the Company had been in large part wrongfully and fraudulently depleted and disposed of, and, second, that the value of such depleted assets, or the value of the rights of action which would grow out of their wrongful depletion or conversion, could not be considered in the appraisal proceedings, but that in such proceedings there would be appraised only the remaining tangible assets, such as mines, reduction plant, etc., of the Parrot Company. The first objection to this position of counsel is, that, as conclusively shown by the evidence and the findings of the lower court, there had

been no wrongful or fraudulent depletion or disposition of any of the assets of the Parrot Company.

But, further, if we assume that there had been such fraudulent depletion of the Parrot Company's assets at the time of the sale, there certainly existed rights of action in the Parrot Company, which, in part, are the rights attempted to be asserted in this action for the Parrot Company by appellants as minority stockholders. Appellants could have made proof, if such existed, of such wrongful and fraudulent depletion of assets, before the appraisers and before the court and jury, and had the value of said rights of action appraised and made a part of the total appraisal of the property conveyed. The fact that, perhaps, through an accounting suit or action by a receiver, a more efficient or satisfactory procedure might have been adopted, would not stamp the appraisal proceedings as anything but due process of law.

In *Iowa Central Ry. Co. v. Iowa* (160 U. S., 389), this Court said (p. 393) :

" But it is clear that the Fourteenth Amendment in no way undertakes to control the power of a State to determine by what process legal rights may be asserted or legal obligations be enforced, provided the method of procedure adopted for these purposes gives reasonable notice and affords fair opportunity to be heard before the issues are decided. This being the case, it was obviously not a right, privilege, or immunity of a citizen of the United States to have a controversy in the state court prosecuted or determined by one form of action instead of by another. It is also equally evident, provided the form sanctioned by the state law gives notice and affords an opportunity to be heard, that the mere question of whether it was by a motion or ordinary action in no way rendered the proceeding not due process of law within the constitutional meaning of those words."

Appellants further apparently complain of the appraisal proceedings as not furnishing a fair basis for determining the

value of appellants' stock, because, under the statute, the value of such stock must have been appraised as of the date of appellants' dissent from the sale, appellants' counsel stating that the proper date should have been a date earlier than that and before the property had been wrongfully depleted. The evidence and Court's findings have conclusively determined that there had been no wrongful depletion or misappropriation of assets; and, obviously, the only basis upon which the value of complainants' stock should be determined is as of a time practically coincident with the sale, that is, the date when his ownership rights in the stock are changed.

II. The foregoing proposition will scarcely be questioned by counsel for the appellants. It may, however, be urged that the statutes in question were not enacted until 1899, long after the Parrot Company had been organized, and that this legislation impaired the contract obligation then existing between the corporation and its stockholders, under which the Parrot Company did not have the right to dispose of all its property without the consent of all its stockholders.

1. We have already seen that the principle is not applicable to the peculiar facts existing in the present case, owing to the finding by the District Court that the sale was valid, and to the express provisions of the charter which permitted a sale of all the property without the consent of all the stockholders.

2. As a matter of fact, the legislation in question did antedate the charter as it existed in 1900, when the complainants first acquired the stock of the Company. The corporate existence of the Parrot Company did not, under its original charter, expire until 1900 (195); and, as the extension of 1897 was for an *additional* twenty years (200), that extension necessarily dated from 1900. The Montana statutes authorizing the sale

of all the property of a mining company upon the consent of two-thirds of the stockholders were enacted in 1899 (Laws of Montana, 1899, p. 105). That Act, therefore, became effective before the extension of the corporate existence took effect, and there was, therefore, no question of the impairment of the contract by a subsequent statute.

III. Even, however, if the Act of 1899 had been passed after the extension of the charter, it would make no difference, because the right to alter, amend or repeal had been expressly reserved in the Corporation Law of Montana, which was in force in 1880, when the Parrot Company was incorporated. The General Incorporation Act of 1871 (Codified Stat. Mont. 1871-2, Sec. 21), contained the following provision (p. 410):

"The legislature may at any time alter, amend or repeal this Act, but such amendment or repeal shall not take away or impair any rights acquired or remedy given against any such corporation, its stockholders or officers, for any liability which shall have been previously incurred."

This Section was incorporated, without change, in the Revised Statutes of Montana of 1879 (Sec. 264, p. 454), and again in the Compiled Laws of Montana of 1887 (Sec. 466, p. 730). The Constitution of Montana, adopted in 1899, provided for the formation of corporations under general laws, which should be "subject to future repeal or alteration by the legislative assembly"; and the legislature was expressly authorized "to alter, revoke or annul any charter or incorporation existing at the time of the adoption of the Constitution, or which may be hereafter incorporated, whenever in its opinion it may be injurious to the citizens of the State" (Article XV, Secs. 2 and 3).

Similar reservations are contained in the Act of 1895 (Secs. 394, 550), and in the Revised Codes of 1907 (Secs. 3809, 3904).

In the Ajax Mining Company Case, heretofore referred to, the Supreme Court of Montana construed the provisions of the amend, alter and repeal Act, in force in Montana since 1871, as authorizing such a change in the corporate law as is found in the provisions of Sections 4411 and 4412 of the Montana Revised Codes, and held that under this reserved power the Act of 1899 was valid, even when applied to corporations previously organized.

Allen v. Ajax Mining Co., 30 Montana, 490.

In Somerville v. St. Louis Mining Co. (46 Montana, 268), the Court said :

“ Our conclusion in that case was that the reserved power may be exercised, not only to alter the contract as it exists between the state and the corporate entity, but as well to alter the contract existing between the corporation and its stockholders, and the stockholders *inter sese*, to the extent that the authority to dispose of all the corporate property—which was denied the corporation at the time it was organized—may be conferred by subsequent legislation.”

These decisions of the court of last resort of Montana, as to the construction to be placed upon the reserved power statutes, are controlling upon this Court, and settle beyond question that, by the Montana statute of 1871, continued in force by subsequent legislation, the Montana legislature intended to, and did, reserve power to amend its corporate law in the manner provided in the Act of 1899.

Schurz v. Cook, 148 U. S., 397, 411 ;

Hammond Packing Co. v. Arkansas, 212 U. S., 322, 343.

IV. This Court has itself frequently held that, under the reserve power, a statute such as this does not impair the obligation of contracts. The charter of a corporation may be repealed altogether under this power. If the legislature, in

the exercise of its reserve power, has the absolute right to destroy the corporate existence and thus compel the liquidation and distribution of the corporate assets, it certainly has the right to provide that the same result may be accomplished by the consent of holders of two-thirds of the outstanding stock, especially when provision is made for the appraisal and purchase of the shares of dissenting stockholders.

Pennsylvania College Cases, 13 Wall., 213 ; 80 U. S., 213 ;

Miller v. State, 82 U. S., 478, 495 ;

Sinking Fund Cases, 99 U. S., 721 ;

Greenwood v. Freight Co., 105 U. S., 13, at 17 ;

United States v. Des Moines, etc., Navigation Co., 142 U. S., 510, 544 ;

Hamilton Gas Light Co. v. Hamilton, 146 U. S., 258 ;

Schurz v. Cook, 148 U. S., 397 ;

N. Y. & New England R. R. Co. v. Bristol, 151 U. S., 556 ;

Citizens Bank v. Owensboro, 173 U. S., 636 ;

Looker v. Maynard, 179 U. S., 52 ;

Hammond Packing Co. v. Arkansas, 212 U. S., 322-343 ;

Mo. Pac. Ry. Co. v. Kansas, etc., 216 U. S., 274 ;

Calder v. Michigan, 218 U. S., 579 ;

Ramapo Water Co. v. New York, 236 U. S., 579.

V. Even if this power had not been expressly reserved by the Montana legislature, the statute of 1899 would unquestionably be valid as applied to corporations previously formed. The only contract right which appellants can claim would be impaired by such application of the statute is one based upon the common law principle that the corporation could not, in the absence of statutory authority, dispose of all its property without the unanimous consent of its stockholders. Such common-law right had been eliminated in Montana by other legislation enacted long prior to the formation of the Parrot Company, and in force at all times since.

In the Montana General Incorporation Act, incorporated in the Codified Statutes of 1871-1872 (Sections 43 and 44, page 418) provision is made for the dissolution of any corporation, and the distribution of its assets by its trustees, at any time, by the vote of the holders of two-thirds of all the stock. This statutory provision is found in the Revised Statutes of 1879 as Sections 286 and 287, page 461, and has been carried through all of the revisions and codifications of the Montana law, and is found in the Revised Codes of Montana of 1907 as Sections 7323-7329. Under this statute, it was within the power of the holders of two-thirds of the Parrot stock, at any time, to cause all of its property to be disposed of and its dissolution effected, or, in other words, to do exactly what appellants are complaining of in this action.

EIGHTH.

The alleged constitutional question frivolous.

So obvious is the utter lack of any foundation on the part of the appellants to assert in this Court the violation of any constitutional right possessed by them by the decision of the Court below that the appeal is plainly frivolous, and should be dismissed for that reason.

David Kaufman & Sons Co. v. Smith, 216 U. S., 610 ;

Franklin v. U. S., 216 U. S., 559 ;

Hannis Distilling Co. v. Baltimore, 216 U. S., 285 ;

Fay v. Crozer, 217 U. S., 455 ;

Leonard v. Vicksburg R. R. Co., 198 U. S., 416 ;

Chante City v. Trader, 132 U. S., 210 ;

Swope v. Leffingwell, 105 U. S., 3 ;

New Orleans Waterworks v. Louisiana, 185 U. S., 336 ;

Blythe v. Hindley, 180 U. S., 333 ;

N. Y. & New England R. R Co. v. Bristol, 151
U. S., 556 ;
Equitable Life Assurance Society v. Brown, 187
U. S., 308 ;
Newburyport Water Co. v. Newburyport, 193,
U. S., 561.

NINTH.

**The appeal should be dismissed, or, in the
alternative, the decree of the District Court
should be affirmed, with costs.**

Washington, April, 1917.

JOHN A. GARVER,
of New York City.

L. O. EVANS,
of Butte, Montana.

Counsel for Appellees.

WALL ET AL. v. PARROT SILVER & COPPER COM-
PANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MONTANA.

No. 271. Argued May 4, 7, 1917.—Decided June 4, 1917.

The court agrees with the District Court in concluding that appellants' allegations of fraud were not sustained.

Generally speaking, when fraud is alleged and denied, the party making the charge will be confined to that issue.

When a constitutional question, asserted as the basis for the jurisdiction of this court on direct appeal from the District Court, is pleaded

as resulting from the execution of a fraudulent scheme, the question ought not to be considered (*semble*), if the charge of fraud fails. By claiming the benefits of state laws the right to question their constitutionality may be waived.
216 Fed. Rep. 242, affirmed.

THE case is stated in the opinion.

Mr. Francis P. Garland and *Mr. Asa P. French* for appellants.

Mr. L. O. Evans and *Mr. John A. Garver* for appellees.

MR. JUSTICE CLARKE delivered the opinion of the court.

The appellants as owners of 1210 of the 229,850 shares of the capital stock of the Parrot Silver & Copper Company, a corporation organized under the laws of Montana, filed their bill in the United States District Court for the District of Montana, seeking to avoid an executed sale of all the property and assets of that company made on May 31, 1910, to the Anaconda Copper Mining Company, the consideration being a stipulated number of shares of the vendee company.

The claim of the appellants is that in 1899 certain persons acquired control of a majority of the shares of the capital stock of the Parrot Company with the fraudulent purpose of so managing its affairs as to deplete and depreciate its assets "and then to acquire them" for less than their real value, thereby depriving the minority stockholders of "the just and fair value of their right and interest" as shareholders or "of an appraisal of the value of their stock on any adequate basis of value."

It is further claimed that this fraudulent scheme found consummation in the sale to the Anaconda Company, which was made under authority of §§ 4409, 4410, 4411, and 4412 of the Revised Codes of Montana.

Section 4409 provides that a sale may be made of all the assets of any mining corporation when at least two-thirds of the whole number of shares of the capital stock outstanding shall vote in favor of making such sale at a meeting called and notified as provided in the section. Such a sale of the "whole of the property of such corporation" works a dissolution of the corporation under § 4410 and its affairs must be wound up. Section 4411 provides that any stockholder who shall not have voted for or authorized such sale may, within twenty days from the date of the stockholders' meeting authorizing it, give written notice that he does not assent thereto and demand payment of the value of his stock, and ten days after the service of such notice he must, or the corporation may, apply to a designated court and have the value of the stock fixed and appraised. Upon such application the court shall appoint three appraisers who shall take evidence in relation to and shall find the value of the stock of such dissenting stockholder "at the time of his dissent." To any stockholder not satisfied with the award of the appraisers the next section, 4412, allows an appeal to the District Court where the value of the stock shall be re-assessed by a jury in the same manner as in "appeals from the assessment of commissioners in condemnation proceedings provided by law." The judgment on such an award must be entered against both the vendor and the vendee corporation, and by the statute it is made a lien superior to the rights of the vendee upon all of the real property sold.

After the sale to the Anaconda Company complained of the appellants served a notice of dissent on the Parrot corporation and commenced a statutory proceeding for the appraisal of their stock, which has not been brought on for hearing but is still pending.

The claim upon which the appellants come into this court by direct appeal is that the statutes of Montana

referred to are unconstitutional because they provide for a sale of all the property of the corporation upon a favorable vote of less than all (not less than two-thirds) of the shares of the capital stock of the corporation and that dissenting stockholders must accept an award of the value of their stock made as of the date of sale. Such an award in this case, it is claimed, would be based upon a valuation of the assets of the company after they had been fraudulently depleted and depreciated and without its being possible in such a proceeding to add anything to the value of their stock on account of the damage which the persons in control of the defendants by their fraudulent conduct had done to the property of the Parrot Company, and thereby to the value of the appellants' stock prior to the sale. This, it is contended, would result in taking the property of the appellants without just compensation and in violation of the "due process of law" and of the "equal protection of the laws" clauses of the Fourteenth Amendment to the Constitution of the United States.

This summary of this record shows that the claims of the bill presented to the District Court for decision two questions, viz:

(1) Did the defendants fraudulently dissipate and depreciate the assets of the Parrot Company prior to the sale complained of to the damage of the interest of the appellants as stockholders?

(2) If the Montana statutes were given effect, would they so deprive the appellants of a part of the value of their stock as to offend against the designated provisions of the Fourteenth Amendment to the Constitution of the United States?

An examination of this record leads us to fully agree with the trial court in its conclusion that the appellants failed utterly to sustain their allegations that the property of the Parrot Company was fraudulently dissipated and depreciated through the management of the defendants

prior to the sale or that the sale made was in any respect fraudulent. Upon this conclusion the judgment of the District Court might well be affirmed, for the reason that where fraud is charged in a bill or set up in an answer, and is denied, the party making the charge will be confined to that issue, and also for the reason that where the claimed constitutional question on which a direct appeal to this court is based is pleaded as resulting from the carrying into effect of a fraudulent scheme, when such charge of fraud fails the asserted constitutional question ought not to be considered. *French v. Shoemaker*, 14 Wall. 314; *Eyre v. Potter*, 15 How. 42; *Chicago, Burlington & Quincy Ry. Co. v. Babcock*, 204 U. S. 585, 593.

But we prefer not to have the case go off on this seemingly technical but really sound and substantial rule.

There remains the contention that the statutes of Montana which we have epitomized, if enforced, will deprive the appellants of their property without due process of law because they provide that sale may be made of all the assets of the corporation when authorized by not less than two-thirds of the outstanding capital stock of the corporation and that the plaintiffs must accept either the payment for their shares which this large majority of their associates think sufficient or, if they prefer, the value in money of their stock to be determined by three appraisers or, still at the election of appellants by a court and jury.

This record does not call upon us to examine into this challenge of the validity of these statutory provisions, similar as they are to those of many other States and of a seemingly equitable character, for the reason that the appellants by their action in instituting a proceeding for the valuation of their stock, pursuant to these statutes, which is still pending, waived their right to assail the validity of them. *Great Falls Mfg. Co. v. Attorney General*, 124 U. S. 581; *Electric Co. v. Dow*, 166 U. S. 489; *Pierce v. Somerset Railway*, 171 U. S. 641; *Leonard v. Vicksburg*,

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Shreveport & Pacific R. R. Co., 198 U. S. 416, 422. They cannot claim the benefit of statutes and afterwards successfully assert their invalidity. There is no sanctity in such a claim of constitutional right as prevents its being waived as any other claim of right may be.

The decision of the District Court is

Affirmed.
